Disney v DeSantis & FL Case 4:23-cv-00163-AW-MJF

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Florida Legislators Threaten to Repeal Reedy Creek Improvement Act in Disney World

By Sara McOmber
Posted on March 30, 2022

Tensions between the Walt Disney Company and some Florida politicians are high right now due to the recent controversy surrounding the "Don't Say Gay" bill, which has now been signed into law.

Pride Banners in Disney Springs

Disney has stated that their current goal as a company is "for this law to be repealed by the legislature or struck down in the courts," which they intend to accomplish by supporting organizations working towards that action. Some Florida politicians have spoken out against Disney for this statement, **and now it seems**

that there could be action taken against the Walt Disney Company in response to their condemnation of the bill.

Spencer Roach, a Republican member of the Florida House of Representatives, recently tweeted that the House has now met twice to discuss "a repeal of the 1967 Reedy Creek Improvement Act, which allows Disney to act as its own government."

> Yesterday was the 2nd meeting in a week w/fellow legislators to discuss a repeal of the 1967 Reedy Creek Improvement Act, which allows Disney to act as its own government. If Disney wants to embrace woke ideology, it seems fitting that they should be regulated by Orange County. pic.twitter.com/6sj29Gj6Wz
>
> — SpencerRoach (@SpencerRoachFL) March 30, 2022

So what would this mean for Disney? First, let's take a look at what the Reedy Creek Improvement Act really is. This act created the Reedy Creek Improvement District (RCID), which is a multi-purpose district that provides essential public services; regulates building codes, land use, and environmental protections; and tries to provide direction for the efficient operation of Walt Disney World property. For all intents and purposes, **it's a distinct governing body that functions only in Disney World.**

Reedy Creek Fire Department

The RCID was created in 1967 when Disney wanted to build a new theme park (Disney World) in Central Florida. The land they wanted to use was located in both Orange and Osceola Counties, and it was pretty

much in the middle of nowhere. The nearest power and water lines were at least 10 miles away. Neither Orange County nor Osceola County had the resources to bring Disney's vision of a new theme park to life, so Florida State Legislature created RCID — a special taxing district "that would act with the same authority and responsibility as a county government" (RCID).

With this special district, Disney is responsible for paying for things like power, water, roads, and other municipal services on their property — hence the distinct road signs you'll see when you enter Disney World. That means that local taxpayers in the area don't have to pay for these maintenance services that take place inside Disney World.

Heading into Disney World!

It also means that Disney is free to try more innovative construction projects, such as using fiberglass as the main material to build the Cinderella Castle or installing the huge waste disposal system that runs underneath Magic Kingdom.

Cinderella Castle

If the Reedy Creek Improvement Act were to be repealed, it's possible that Disney could lose some of the freedom they enjoy as a separately governed entity. From what we know right now, it would take a lot more action for the Florida legislature to repeal this law, and they haven't officially begun this process yet.

Keep following AllEars for more updates on the latest Disney news.

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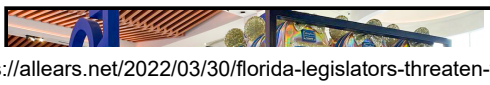

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Disney v.s. Florida: Self-governing Status Threatened After Weighing in on "Don't Say Gay"

May 18, 2022

On March 8, Florida lawmakers passed HB 1557, known to its supporters as

the Parental Rights in Education bill and to opponents as the Don't Say Gay bill.

Officially signed by Gov. Ron DeSantis on March 28, the legislation sparked controversy for the potential to restrict safety and support for LGBTQ+ students, drawing reactions from parents, teachers, organizations and most recently — companies.

Disney is one of the first companies to receive backlash from Republican lawmakers after voicing opposition to the law. The backlash involves an attempt to dismantle the Reedy Cree Improvement District, despite potential issues involving the district's debt.

The law

Introduced and sponsored by Rep. Joe Harding, R-Ocala, the law requires a school district to notify a student's parents of information concerning a child's upbringing and prohibits instruction about gender identity and sexual orientation in kindergarten through third grade. Conversations about such topics must be age-appropriate for all grades.

On July 1, the law will be implemented and start to impact Florida classrooms.

The National Center for Lesbian Rights is one of the organizations currently filing a lawsuit against the state over the bill on behalf of Family Equality, Equality Florida, teachers and parents. The lawsuit involves defending free speech and equal protection rights.

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However, the dozens of major corporations who have also opposed the bill display a general understanding of the long-lasting impacts on LGBTQ+ youth's mental health and well-being the bill will have, Imani Rupert-Gordon, the NCLR Executive Director, said in a statement.

"Any political threats against specific companies that oppose this heinous new law are just red herrings to obscure the real dangers this type of legislation poses for our most vulnerable youth," she said.

Supporters of the law argue that parental rights must be reinforced, emphasizing parents' rights in critical decisions about their children. Republican lawmakers like Sen. Dennis Baxley, R-Ocala, and Harding assert that gender identity and sexuality are inappropriate topics for classroom discussion in kindergarten through third grade.

Disney's response

Upsetting lawmakers and stirring controversy, Disney tweeted in response to the "Don't Say Gay" bill on March 28, stating the bill "should never have passed and should never have been signed into law."

Initially, Disney did not publicly express opposition to the legislation, staying neutral. Facing criticism for not speaking out about the legislation despite being a major corporation with strong ties to Florida, Disney expressed hope for the bill to be repealed after being signed into law.

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Republican lawmakers' response

DeSantis responded to Disney's callout in a press conference one day later.

"For Disney to come out and put a statement and say that the bill should have never passed and that they are going to actively work to repeal it, I think, one, was fundamentally dishonest but two, I think that crossed the line," he said.

DeSantis criticized Disney for acting as a "woke" corporation and threatened to revoke the company's self-governing powers, granted by the Reedy Creek Improvement Act.

The Reedy Creek Improvement District allows Disney to regulate its own land. This act, passed in 1967, aimed to foster economic growth and tourism, incentivizing Disney to come to Florida. The Reedy Creek Improvement District has authority over its emergency services, public roadways and building codes.

Before Disney spoke out against the "Don't Say Gay" bill, the company donated $190,000 to support Republican lawmakers in Florida, though the company has now paused donations amid the controversy.

Several Republican representatives including Harding and Randy Maggard, R-Pasco, have returned thousands of dollars in campaign contributions in light of Disney's response.

Last week, lawmakers in the state were successful in eliminating the Reedy Creek Improvement District, revoking Disney's power to

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govern themselves and the district's special tax status. This change will go into effect in June 2023.

Disney's impact on Florida

Revoking Disney's self-governing powers could affect many Floridians. Disney employs approximately 80,000 Florida workers in their vast array of theme parks in Orlando.

Disney is the largest employer in Florida and a strong part of Florida's economy. Until now, Disney's economic influence in the state has given the company enormous power to govern itself and pursue its interests without opposition from lawmakers.

Other companies opposing the law

Disney's public denouncing of the "Don't Say Gay" bill is the first of a continuing trend of companies voicing their stance on policies.

Days after the bill passed, several other companies followed Disney's lead by publicly opposing the bill. United Airlines, Oracle and IHG Hotels & Resorts are a few of the companies with a large presence in Florida that signed a petition opposing the new law.

Several other states have proposed bills similar to Florida's bill. Texas, Ohio and Louisiana plan to introduce their versions of the controversial Parental Rights in Education law, prompting more companies to add their name to the petition.

The Reedy Creek Improvement District has about $1 billion worth of bond debt, which can potentially obstruct Republican lawmakers' plans to dismantle the district. Some are concerned that the debt would become the responsibility of Orange and Osceola counties.

If the bond debt were to fall on these two counties, residents of the counties could experience an increase in taxes, suggesting that the district cannot be dissolved until the bond debt is paid off.

As of May 11, a U.S. district judge ruled that Florida taxpayers cannot bring a lawsuit against the state-mandated dissolution of the Reedy Creek Improvement District. It increasingly appears to be up to Disney, and Disney alone, whether or not it will be possible to block the law

Either way, the Parental Rights in Education law is likely to remain the law of the land.

Walt Disney World Entrance in Florida. (Unmodified photo by Denis Adriana Macias used under a Creative Commons license. bit.ly/37WKyBg)

Check out other recent articles from the Florida Political Review here.

By Kelly Miller

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Here's the Latest on the Dissolution of Disney's Reedy Creek Improvement District

By Cassie Agundes
Posted on July 17, 2022

The Walt Disney Company has been experiencing some political pushback following their condemnation of Florida's Parental Rights in Education bill.

Rainbow Mickey Plush

Previously, we've seen Florida politicians, including Gov. Ron DeSantis, move to dissolve the Reedy Creek Improvement District. The dissolution of Reedy Creek will remove many creative and expansive freedoms

for Disney, while potentially placing the burden of maintenance costs on taxpayers. And now, we have an update on this situation.

The dissolution of Reedy Creek is expected to take place by June 2023, leaving many residents wondering what that will mean for them — even inspiring some to take legal action. And, according to an Orlando Business Journal article, experts are also speculating that tax burdens may fall on residents in Orange and Osceola counties, potentially surpassing $1 billion in debt and costs.

©Reedy Creek

In terms of moving forward, DeSantis has confirmed he's working on new legislation regarding the district, although no details beyond that have been shared. The article also points to an event at Seminole State College where DeSantis announced that local governments would not be allowed to take control, leaving the state to assume control, regulate laws, and collect taxes.

Reedy Creek Fire Marshal Sign in Disney World

There still aren't specific plans for the dissolution, but we know it won't be effective until June 1st, 2023 (according to the bill). However, according to Bryan Griffin, a spokesman with DeSantis' office, the debts of Reedy Creek will not fall on the local residents, and they'll share more in the future.

Reedy Creek trash cans in Disney Springs

Most experts find the ambiguity of the dissolution and its troubling logistics to be concerning. This has some experts, like Chad Emerson, author of the book “Project Future: The Inside Story Behind the Creation of Disney World,” pointing to keeping Reedy Creek as the best solution for citizens, workers, and Florida businesses.

Magic Kingdom

UPDATE: The Director of Florida's Division of Bond Finance, Ben Watkins, has said that there will probably be a successor district created by Florida lawmakers, according to Bloomberg. This district would take on most of the power to perform municipal functions that the Reedy Creek district holds right now. It would also take on its debts.

Watkins said that it is also to be expected that the previously-granted powers given to the district that were never used will not be authorized, like operating a nuclear power plant. He also said that Gov. DeSantis' office has been supportive of the idea of a successor district, but legislators do have the final say in what will happen.

Tower of Terror

There is still another lawsuit filed by Central Floridians regarding the potential tax implications, which is expected to be heard in late July or August. We'll update you when there's more movement on the lawsuit, as well as the dissolution of Reedy Creek.

In the meantime, to understand this situation better, take a look at Disney's response to Florida's Parental Rights in Education bill. Then, check out the reaction from Florida politicians, which included the inspiration to dissolve Reedy Creek.

Disney Décor During Pride Month

We'll continue to bring you the latest Disney updates, so stay tuned to AllEars.

FLORIDA WILL LIKELY TAKE CONTROL OF REEDY CREEK IMPROVEMENT DISTRICT

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF FLORIDA

WALT DISNEY PARKS AND RESORTS U.S., INC., Plaintiff, v. RONALD D. DESANTIS, in his official capacity as Governor of Florida; MEREDITH IVEY, in her official capacity as Acting Secretary of the Florida Department of Economic Opportunity; MARTIN GARCIA, in his official capacity as Board Chair of the Central Florida Tourism Oversight District; MICHAEL SASSO, in his official capacity as Board Member of the Central Florida Tourism Oversight District; BRIAN AUNGST, JR., in his official capacity as Board Member of the Central Florida Tourism Oversight District; RON PERI, in his official capacity as Board Member of the Central Florida Tourism Oversight District; BRIDGET ZIEGLER, in her official capacity as Board Member of the Central Florida Tourism Oversight District; and JOHN CLASSE, in his official capacity as Administrator of the Central Florida Tourism Oversight District, Defendants.	Case No.

COMPLAINT

FOR DECLARATORY AND INJUNCTIVE RELIEF

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Plaintiff Walt Disney Parks and Resorts U.S., Inc. ("Disney" or the "Company"), the owner and operator of the Walt Disney World Resort ("Walt Disney World") in Central Florida, alleges in support of its Complaint for Declaratory and Injunctive Relief as follows:

INTRODUCTION

1. For more than half a century, Disney has made an immeasurable impact on Florida and its economy, establishing Central Florida as a top global tourist destination and attracting tens of millions of visitors to the State each year. People and families from every corner of the globe have traveled to Walt Disney World because of the unrivaled guest experience it provides and the deep emotional connection that generations of fans have with Disney's timeless stories and characters.

2. A targeted campaign of government retaliation—orchestrated at every step by Governor DeSantis as punishment for Disney's protected speech—now threatens Disney's business operations, jeopardizes its economic future in the region, and violates its constitutional rights.

3. Today's action is the latest strike: At the Governor's bidding, the State's oversight board has purported to "void" publicly noticed and duly agreed development contracts, which had laid the foundation for billions of Disney's investment dollars and thousands of jobs. This government action was patently

retaliatory, patently anti-business, and patently unconstitutional. But the Governor and his allies have made clear they do not care and will not stop. The Governor recently declared that his team would not only "void the development agreement"—just as they did today—but also planned "to look at things like taxes on the hotels," "tolls on the roads," "developing some of the property that the district owns" with "more amusement parks," and even putting a "state prison" next to Walt Disney World. "Who knows? I just think the possibilities are endless," he said.

4. Disney regrets that it has come to this. But having exhausted efforts to seek a resolution, the Company is left with no choice but to file this lawsuit to protect its cast members, guests, and local development partners from a relentless campaign to weaponize government power against Disney in retaliation for expressing a political viewpoint unpopular with certain State officials.

5. Disney is enormously proud of the foundational role it has played in creating Central Florida's tourism industry. The Reedy Creek Improvement District ("RCID" or the "District"), Disney's local governing jurisdiction, was integral to its success from the beginning—in 1967.

6. Fast forward five decades, and Disney today is an unparalleled engine for economic growth in the State. Among other distinctions, Disney is one of Central Florida's largest taxpayers, with more than $1.1 billion paid in state and

local taxes last year. Disney is also one of the largest employers in the State, with more than 75,000 cast members.

7. The State of Florida has flourished in the years since Walt Disney himself surveyed many acres of swampland in 1963 and dreamed the possibility of Walt Disney World. Florida's elected officials have long understood how consequential Disney is to the State's economy and future, just as Disney has sought to be a constructive, responsible, and charitable Florida resident.

8. Governor DeSantis and his allies paid no mind to the governing structure that facilitated Reedy Creek's successful development until one year ago, when the Governor decided to target Disney. There is no room for disagreement about what happened here: Disney expressed its opinion on state legislation and was then punished by the State for doing so.

9. Governor DeSantis announced that Disney's statement had "crossed the line"—a line evidently separating permissible speech from intolerable speech—and launched a barrage of threats against the Company in immediate response. Since then, the Governor, the State Legislature, and the Governor's handpicked local government regulators have moved beyond threats to official action, employing the machinery of the State in a coordinated campaign to damage Disney's ability to do business in Florida. State leaders have not been subtle about their reasons for government intervention. They have proudly declared that Disney

deserves this fate because of what Disney said. This is as clear a case of retaliation as this Court is ever likely to see.

10. At the Governor's behest, the State Legislature first voted to dissolve the long-standing RCID, then ultimately voted to give near-complete control of RCID to the Governor himself. As the Florida representative who introduced the Reedy Creek dissolution bill declared to the Florida House State Affairs Committee: "You kick the hornet's nest, things come up. And I will say this: You got me on one thing, this bill does target one company. It targets The Walt Disney Company."

11. Disney has never wanted a fight with the Florida government. The Company sought to de-escalate the matter for nearly a year, trying several times to spark a productive dialogue with the DeSantis Administration. To no avail.

12. Amid great uncertainty about the lengths to which the State would go to keep punishing Disney for its views, RCID and the Company gave public notice, in January 2023, that they would enter into contracts to secure future development for the District and Walt Disney World—contracts that implemented a comprehensive plan for the District that the DeSantis Administration itself had found compliant with Florida law months earlier.

13. Through the development plan and implementing contracts, Disney set huge goals for itself and laid foundations for spectacular economic growth in

Central Florida. Disney plans to invest over $17 billion in Walt Disney World over the next decade. The Company estimates that those investments will create 13,000 new Disney jobs in that same 10-year time period.

14. Big goals aside, these contracts are land use agreements between a developer and its local regulator. They are similar in character to contracts between other developers and special districts to fix long-term development rights and obligations, thereby facilitating the certainty needed to ensure investment and effective commercial progress. Contrary to misunderstandings and mischaracterizations by some government leaders, they do not undermine the newly constituted Central Florida Tourism Oversight District ("CFTOD" or the "District") board's ability to govern and exercise authority, including by imposing taxes, exercising the power of eminent domain, approving or disapproving building permit applications (including for the projects carried out pursuant to the development agreement), building roads, providing emergency services, or issuing bonds.

15. Moreover, nothing about these contracts was a surprise: They were discussed and approved after open, noticed public forums in compliance with Florida law. And in the very same legislation that replaced the elected board governing Disney with board members picked by the Governor, the State

Legislature reaffirmed the enforceability of all prior contracts, including those here.

16. Disney takes seriously its responsibility to shareholders, employees, and the many residents and local businesses in Central Florida whose livelihoods depend on Walt Disney World. And Disney now is forced to defend itself against a State weaponizing its power to inflict political punishment.

17. It is a clear violation of Disney's federal constitutional rights—under the Contracts Clause, the Takings Clause, the Due Process Clause, and the First Amendment—for the State to inflict a concerted campaign of retaliation because the Company expressed an opinion with which the government disagreed. And it is a clear violation of these rights for the CFTOD board to declare its own legally binding contracts void and unenforceable. Disney thus seeks relief from this Court in order to carry out its long-held business plans.

18. Disney finds itself in this regrettable position because it expressed a viewpoint the Governor and his allies did not like. Disney wishes that things could have been resolved a different way. But Disney also knows that it is fortunate to have the resources to take a stand against the State's retaliation—a stand smaller businesses and individuals might not be able to take when the State comes after them for expressing their own views. In America, the government cannot punish you for speaking your mind.

PARTIES

19. Walt Disney Parks and Resorts U.S., Inc. is a Florida corporation with its principal place of business in Orange County, Florida. Disney owns and operates Walt Disney World in Central Florida. Guests from around the world visit to enjoy a Disney vacation, where family members of all ages laugh, play, and learn together.

20. Defendant Ronald D. DeSantis is the Governor of Florida. Governor DeSantis called on the Legislature to pass bills to punish Disney for its speech—one bill dissolving the Reedy Creek Improvement District ("RCID" or the "District"), the other installing a Governor-selected oversight board. He signed into law Senate Bill 4C (2022) and House Bill 9B (2023) and appointed the members of the newly constituted Central Florida Tourism Oversight District ("CFTOD" or the "District") board, Disney's local regulator. Fla. Const., art. IV, § 1; Senate Bill 4-C, Fla. Laws ch. 2022-266 (amending Fla. Stat. § 189.0311) ("Senate Bill 4C"); House Bill 9-B, Fla. Laws ch. 2023-5 ("House Bill 9B"); Fla. Laws ch. 2023-5 ("CFTOD Charter") § 4(1). He is sued in his official capacity.

21. Defendant Meredith Ivey is the Acting Secretary of the Florida Department of Economic Opportunity. Acting Secretary Ivey serves as the head of the Florida Department of Economic Opportunity. Fla. Stat. § 20.60(2). The Florida Department of Economic Opportunity is authorized by statute to maintain

the Official List of Special Districts, which includes all special districts in Florida. Fla. Stat. § 189.061(1)(a), (2); *see id.* § 189.012(1). The Secretary of the Florida Department of Economic Opportunity is appointed by the Governor, reports to the Governor, and serves at the pleasure of the Governor. Fla. Stat. § 20.60(2). She is sued in her official capacity.

22. Defendant Martin Garcia is the Chair of the Central Florida Tourism Oversight District board. The board is CFTOD's governing body, has "controlling authority over the district," and exercises the District's statutory powers. *See* CFTOD Charter § 4(1). Chair Garcia was appointed by the Governor. *Id.* He is sued in his official capacity.

23. Michael Sasso is a member of the Central Florida Tourism Oversight District board. Sasso was appointed by the Governor. He is sued in his official capacity.

24. Brian Aungst, Jr. is a member of the Central Florida Tourism Oversight District board. Aungst was appointed by the Governor. He is sued in his official capacity.

25. Ron Peri is a member of the Central Florida Tourism Oversight District board. Peri was appointed by the Governor. He is sued in his official capacity.

26. Bridget Ziegler is a member of the Central Florida Tourism Oversight

District board. Ziegler was appointed by the Governor. She is sued in her official capacity.

27. Defendant John Classe is the District Administrator of the Central Florida Tourism Oversight District. The CFTOD board appoints the District Administrator and can remove him by vote at any time. *See* CFTOD Charter § 4(6)(b). The District Administrator is "in charge of the day-to-day operations of the district subject to the board of supervisor's direction and policy decisions." *Id.* He is sued in his official capacity.

JURISDICTION AND VENUE

28. This Court has subject-matter jurisdiction under 28 U.S.C. §§ 1331 and 1343 because this action arises under the United States Constitution and federal law.

29. This Court has authority to grant relief under the Declaratory Judgment Act, 28 U.S.C. §§ 2201, 2202, and 28 U.S.C. § 1343(a) and 42 U.S.C. § 1983.

30. In addition, this Court has authority to issue injunctive relief under the All Writs Act, 28 U.S.C. § 1651.

31. This Court's jurisdiction is properly exercised over Defendants in their official capacities, as Disney is seeking declaratory and injunctive relief only. *Ex parte Young*, 209 U.S. 123 (1908).

32. This Court has personal jurisdiction over Defendants, and venue is proper in this District pursuant to 28 U.S.C. § 1391, because a substantial part of the events giving rise to this claim occurred in this District.

33. There is an actual and justiciable controversy between Disney and Defendants, of sufficient immediacy and concreteness relating to the parties' legal rights and duties to warrant relief under 42 U.S.C. § 1983 and 28 U.S.C. §§ 2201 and 2202, because Senate Bill 4C, House Bill 9B, and CFTOD's April 26, 2023 legislative findings and declaration that Disney's contracts are "void and unenforceable" (the "Legislative Declaration") constitute a present and continuing infringement of Disney's constitutional rights.

FACTUAL BACKGROUND

A. THE REEDY CREEK IMPROVEMENT DISTRICT HAS BENEFITED FLORIDA AND ITS RESIDENTS FOR DECADES

34. In 1963, Walt Disney looked down on acres of undeveloped Central Florida land from an airplane seat and saw potential. Disney quickly acquired title or options for over 27,000 acres of land, comprising roughly 43 square miles in Central Florida.

35. In 1966, the State created the Reedy Creek Drainage District, which allowed Disney, the largest landowner, to begin the effort of draining and reclaiming land so that actual site construction would be possible. The following year, the Florida Legislature expanded the scope of the district's authority,

establishing the Reedy Creek Improvement District. *See* Fla. Laws ch. 67-764 ("Reedy Creek Enabling Act").

36. In the Reedy Creek Enabling Act, the Legislature recognized that "the economic progress and well-being of the people of Florida depend in large measure upon the many visitors and new residents who come to Florida," Reedy Creek Enabling Act at 4, and, to that end, the Legislature granted RCID powers, functions, and authorities necessary to foster "a recreation-oriented community" that would "enable enterprises" to "undertake" "a broad and flexible program of experimentation and development." *Id.* at 5. RCID was tasked with "provid[ing] for the reclamation, drainage and irrigation of land," "water and sewer systems and waste collection and disposal facilities," "public transportation and public utilities," and "streets, roads, [and] bridges." *Id.* The Legislature determined that the purposes of the act could not "be realized except through a special taxing district having the[se] powers." *Id.* at 6.

37. In 1968, the State of Florida challenged RCID's power to issue drainage bonds. *See State of Florida v. Reedy Creek Improvement District*, 216 So. 2d 202 (Fla. 1968). The State argued that, because Disney was the largest landowner in RCID, the water control improvements funded by the bonds would impermissibly put public funds to a private purpose. *Id.* at 205. The Florida Supreme Court rejected the challenge, finding that RCID served a *public* purpose.

In particular, it concluded that the purpose of RCID was "essentially and primarily directed toward encouraging and developing tourism and recreation for the benefit of citizens of the state and visitors to the state generally." *Id.* at 205-206.

38. The Florida Supreme Court also confirmed that the Legislature had properly established RCID, explaining that "the Legislature in the exercise of its plenary authority may create a special improvement district encompassing more than one county and possessing multi-purpose powers essential to the realization of a valid public purpose." *Id.* at 206. The Court further emphasized that while RCID's powers over land use and economic development were broad, they were not "commensurate in scope with those characteristic of a local municipal government" and were not "a mere subterfuge to avoid the creation of a municipality." *Id.* at 206.

39. In the decades that followed, RCID has played a critical role in providing vital services for tourism in Central Florida. RCID enforces building codes, provides emergency services, and offers utilities—subject to the oversight of state and federal regulators. Under state law, special district board meetings are open to the public and districts provide reasonable notice of and produce minutes of each meeting; these records are open for public inspection. *See* Fla. Stat. § 286.011(1), (2). In a 2004 report, Florida's Office of Program Policy Analysis &

Government Accountability concluded that RCID was meeting "the public purpose expressed in its special act[.]"[1]

40. Today, the area formerly governed by RCID (now governed by CFTOD) encompasses approximately 25,000 acres of land and covers portions of Orange and Osceola Counties. The District employs hundreds of employees responsible for stewarding the land consistent with environmental regulations and public safety. The District has built 134 miles of roadways and 67 miles of waterways. It has managed 60,000 tons of waste. It recycles 30 tons of aluminum, paper, steel cans, cardboard, and plastic containers every year. It uses thousands of vendors, suppliers, and contractors to provide a high level of public services for visitors.

41. Disney is the primary landowner in the District and, as a result, is its largest taxpayer. For the 2022 fiscal year, Disney-owned land constituted 87.7% of the total taxable assessed value within the District.[2]

42. Like many other special districts in Florida, RCID board members were, until recently, elected on the basis of property ownership within the District.

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[1] OFF. PROG. POL'Y ANALYSIS & GOV'T ACCOUNTABILITY, CENTRAL FLORIDA'S REEDY CREEK IMPROVEMENT DISTRICT HAS WIDE-RANGING AUTHORITY 9, Report No. 04-81 (Dec. 2004), https://oppaga.fl.gov/Documents/Reports/04-81.pdf.

[2] REEDY CREEK IMPROVEMENT DISTRICT, ANNUAL FINANCIAL REPORT 51 (Feb. 7, 2022), https://www.rcid.org/document/2021-rcid-annual-financial-report.

As RCID's largest landowner and taxpayer, Disney naturally had substantial input into RCID's acquisition of property, development of transportation facilities, operation of public utilities, and issuance of revenue bonds, among other things. Disney, since the beginning, was the primary contributor to the unprecedented success of RCID's development objectives.

B. OVER A MULTI-YEAR PROCESS, DISNEY AND THE DISTRICT COMPLETE THE COMPREHENSIVE PLAN 2032

43. Under Florida's Community Planning Act, a special improvement district is required to adopt a "comprehensive plan" that guides future growth and development. *See* Fla. Stat. §§ 163.3161(8), 163.3177. Comprehensive plans include elements addressing affordable housing, transportation, infrastructure, conservation, recreation and open space, intergovernmental coordination, and capital improvements. *See id.* § 163.3177(6). Florida law also requires that special districts review their comprehensive plan every seven years to determine whether amendments are necessary. *See id.* § 163.3191(1).

44. The current comprehensive plan is the RCID Comprehensive Plan 2032 ("Comprehensive Plan"). RCID and Disney began collaborating years ago, in 2018, to settle on the amendments captured in the Comprehensive Plan. Among other things, the Comprehensive Plan details maximum development limits, down to the square foot, through 2032 for hotels, office space, retail and restaurants, and theme parks.

45. On May 25, 2022, RCID held a public hearing on the Comprehensive Plan. At that hearing, RCID's Planning and Engineering team advised that the contemplated amendments would bring RCID's Comprehensive Plan up to 2032. After discussing questions from the board and soliciting public comments—there were none—the board unanimously approved the Comprehensive Plan.[3] The City Councils of Bay Lake and Lake Buena Vista had each unanimously approved the Comprehensive Plan the day before.

46. Shortly thereafter, on June 2, 2022, RCID submitted the Comprehensive Plan to the State's Department of Economic Opportunity for review. By letter dated July 15, 2022, the Department confirmed that it had "reviewed the amendment in accordance with the state coordinated review process set forth in Section 163.3184(2) and (4), Florida Statutes" and had "determined that the adopted amendment meets the requirements of Chapter 163, Part II, F.S. for compliance."[4] The Department thereby determined that, among the many other legal requirements it satisfied, the Plan properly set forth "the principles,

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[3] Minutes of Meeting, Reedy Creek Improvement District Board of Supervisors Meeting (May 25, 2022), *available at* https://www.rcid.org/about/board-of-supervisors-2/ (last accessed April 26, 2023).

[4] REEDY CREEK IMPROVEMENT DISTRICT, CITY OF BAY LAKE, & CITY OF LAKE BUENA VISTA, RCID COMPREHENSIVE PLAN 2032 (effective July 15, 2022), https://www.rcid.org/wp-content/uploads/2023/02/2032-RCID-Comprehensive-Plan.pdf (last accessed April 26, 2023).

guidelines, standards, and strategies for the orderly and balanced future economic, social, physical, environmental, and fiscal development of the area that reflects community commitments to implement the plan and its elements." Fla. Stat. § 163.3177(1).

47. By statute, an "affected person" can file a challenge to a plan amendment. A petition challenging a comprehensive plan amendment must be filed within 30 days after the plan amendment is adopted. *See* Fla. Stat. § 163.3184(5)(a).[5] No petition was filed, and the Comprehensive Plan became effective on July 15, 2022.

C. DISNEY PUBLICLY COMMENTS ON HOUSE BILL 1557

48. The Florida Legislature passed the Parental Rights in Education Act ("House Bill 1557") in March 2022.[6]

49. The public discussion before and after the bill's passage was robust not only in Florida, but across the country. Commentary came from all corners,

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[5] *See also* FLORIDA DEPARTMENT OF ECONOMIC OPPORTUNITY, TIME FRAME AND PROCEDURES FOR A CITIZEN CHALLENGE TO A COMPREHENSIVE PLAN AMENDMENT, https://floridajobs.org/community-planning-and-development/programs/community-planning-table-of-contents/time-frame-and-procedures-for-a-citizen-challenge-to-a-comprehensive-plan-amendment.

[6] Committee Substitute for House Bill 1557 (2022), Fla. Laws ch. 2022-22 (amending Fla. Stat. § 1001.42).

including "leaders of global corporations" and "editorial boards of major newspapers."[7]

50. As a Florida corporation and taxpayer with tens of thousands of Florida-based employees, Disney took an interest in the bill. On March 9, the then-CEO of Disney's parent company, The Walt Disney Company, called Governor DeSantis personally to express the Company's concern.

51. Governor DeSantis recounts thinking that "it was a mistake for Disney to get involved" and telling Disney's then-CEO, "'You shouldn't get involved[;] it's not going to work out well for you.'"[8]

52. On March 10, Governor DeSantis's campaign sent an email accusing "Woke Disney" of "echoing Democrat propaganda."[9]

53. Walt Disney World issued the following statement shortly thereafter: "To ALL who come to this happy place, welcome. Disney Parks, Experiences and

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[7] Matt Lavietes, *Here's What Florida's 'Don't Say Gay' Bill Would Do and What It Wouldn't Do*, NBC NEWS (Mar. 16, 2022), https://www.nbcnews.com/nbc-out/out-politics-and-policy/floridas-dont-say-gay-bill-actually-says-rcna19929.

[8] Kimberly Leonard, *Florida Gov. Ron DeSantis Said He Warned Disney Not to Get Involved in Schools Debate: 'It's Not Going to Work Out Well for You,'* BUSINESS INSIDER (June 8, 2022), https://www.businessinsider.com/desantis-says-he-told-disney-to-stay-out-of-dont-say-gay-fight-2022-6.

[9] Cortney Drakeford, *'Woke Disney' Trends After Gov. Ron DeSantis Attacks Company for Freezing Campaign Donations*, INT'L BUS. TIMES (Mar. 12, 2022), https://www.ibtimes.com/woke-disney-trends-after-gov-ron-desantis-attacks-company-freezing-campaign-donations-3435110.

Products is committed to creating experiences that support family values for every family, and will not stand for discrimination in any form. We oppose any legislation that infringes on basic human rights, and stand in solidarity and support our LGBTQIA+ Cast, Crew, and Imagineers and fans who make their voices heard today and every day."[10]

54. Governor DeSantis signed House Bill 1557 into law on March 28. That day, The Walt Disney Company issued a statement expressing its views that the legislation "never should have been signed into law," that its "goal as a company is for this law to be repealed by the [L]egislature or struck down in the courts," and that The Walt Disney Company "remains committed to supporting the national and state organizations working to achieve that."[11]

55. On March 29, Governor DeSantis said that he thought The Walt Disney Company's March 28 statement had "crossed the line" and pledged "to

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[10] Andrew Krietz, *Disney Releases Statement As DeSantis Prepares To Sign Bill Limiting Teachings About Sexual Orientation, Gender*, WTSP (Mar. 22, 2022), https://www.wtsp.com/article/news/politics/disney-florida-desantis-statement-bill/67-170f27d3-eee4-4fb1-ab70-01c73828834a.

[11] Press Release, The Walt Disney Company, Statement From The Walt Disney Company on Signing of Florida Legislation (Mar. 11, 2022), https://thewaltdisneycompany.com/statement-from-the-walt-disney-company-on-signing-of-florida-legislation/.

make sure we're fighting back" in response to Disney's protected speech.[12]

56. Governor DeSantis's memoir attacked Disney's speech and petitioning activity for expressing the wrong viewpoint. "In promising to work to repeal the bill," he asserted, "the company was pledging a frontal assault on a duly enacted law of the State of Florida." As a consequence of its disfavored speech and petitioning, he declared, "[t]hings got worse for Disney."[13]

57. The Governor promptly began his campaign of punishment.

D. GOVERNOR DESANTIS AND THE LEGISLATURE DISSOLVE THE REEDY CREEK IMPROVEMENT DISTRICT

58. On March 30, State Representative Spencer Roach disclosed for the first time that the Legislature was considering dissolving RCID and announced, "If Disney wants to embrace woke ideology, it seems fitting that they should be regulated by Orange County."[14] Governor DeSantis had been orchestrating the move behind the scenes. As he recounts it in his memoir, "I needed to be sure that the Legislature would be willing to tackle the potentially thorny issue involving the

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12 David Kihara, *DeSantis Says Disney 'Crossed the Line' in Calling for 'Don't Say Gay' Repeal*, POLITICO (Mar. 29, 2022), https://www.politico.com/news/2022/03/29/desantis-disney-dont-say-gay-repeal-00021389.

13 Ron DeSantis, THE COURAGE TO BE FREE, ch. 12 (2023).

14 Fatma Khaled, *Disney at Risk of Losing Its Own Government in Florida*, NEWSWEEK (Apr. 1, 2022), https://www.newsweek.com/disney-risk-losing-its-own-government-florida-1693955.

state's most powerful company. I asked the House Speaker, Chris Sprowls, if he would be willing to do it, and Chris was interested. 'OK, here's the deal,' I told him. 'We need to work on this in a very tight circle, and there can be no leaks. We need the element of surprise—nobody can see this coming.'"[15]

59. On March 31, Governor DeSantis quickly affirmed Representative Roach's statement, saying publicly, "[W]e're certainly not going to bend a knee to woke executives in California. That is not the way the state's going to be run."[16]

60. On April 19, Governor DeSantis suddenly called for the Legislature to expand a special session that had been scheduled to address redistricting. The new purpose of the session was to attack Disney by targeting just the handful of Florida's more than one thousand independent special districts that were created before the passage of the 1968 Florida Constitution, like RCID.[17]

61. Governor DeSantis conjured other rationales for the bill, including to "ensure that [independent special districts] are appropriately serving the public interest" and to "consider whether such independent special districts should be

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15 DeSantis, THE COURAGE TO BE FREE, *supra* note 13, ch. 12.

16 Brandon Hogan, *Florida Gov. DeSantis Discusses Potential for Repeal of Disney's Reedy Creek Act*, CLICKORLANDO (Mar. 31, 2022), https://www.clickorlando.com/news/local/2022/03/31/florida-gov-desantis-discusses-potential-of-repeal-of-disneys-reedy-creek-act.

17 *See* Proclamation, Governor Ron DeSantis (Apr. 19, 2022), https://www.flgov.com/wp-content/uploads/2022/04/Proclamation.pdf.

subject to the special law requirements of the Florida Constitution of 1968" that "prohibit[] special laws granting privileges to private corporations."

62. These rationales did not make sense. Only six independent special districts that were created before 1968 had not been reconstituted in the intervening years. Of those, RCID was the only district closely connected to a specific corporation. And, in Governor DeSantis's memoir, he admitted that he "found" that there was this "handful of other districts" that "also deserved scrutiny" only *after* his "staff worked with the legislative staff in the House" to target Disney.[18]

63. When considered against the substance of the legislation, the pretext became especially transparent. The bill did nothing either to "ensure that [independent special districts] are appropriately serving the public interest" or "consider whether such independent special districts should be subject to the special law requirements of the Florida Constitution of 1968" that "prohibit[] special laws granting privileges to private corporations." Instead, under the bill, districts created before 1968 were preemptively scheduled for dissolution *before* the Legislature undertook any analysis to determine whether the districts were serving the public interest, and before any determination as to whether they were subject to the special law requirements of the 1968 Florida Constitution at all. Had the Legislature undertaken that analysis, it would necessarily have found that

[18] DeSantis, THE COURAGE TO BE FREE, *supra* note 13, ch. 12.

RCID served the public interest, as the Florida Supreme Court had already confirmed, *see Reedy Creek Improvement Dist.*, 216 So. 2d at 205-206, and further that RCID was not subject to the 1968 Florida Constitution's prohibition on special privileges granted to private corporations, *see id.* (rejecting as "untenable" the claim that the Reedy Creek Enabling Act's provisions were "oriented to serve primarily the benefit of that particular private enterprise").

64. On April 20, Governor DeSantis sent a fundraising email warning that "Disney and other woke corporations won't get away with peddling their unchecked pressure campaigns any longer" and that he would "not allow a woke corporation based in California to run our state[.]"[19]

65. The campaign against Disney raced forward. The very same morning that Governor DeSantis issued his proclamation expanding the special session, identical bills were introduced in the Florida House and Senate providing for the dissolution of RCID. Florida House Bill 3C and Florida Senate Bill 4C each provided that "any independent special district established by a special act prior to the date of ratification of the Florida Constitution on November 5, 1968, and which

[19] A.G. Gancarski, *Ron DeSantis Dunks on Disney in Donor Pitch*, FLORIDA POLITICS (Apr. 20, 2022), https://floridapolitics.com/archives/517962-ron-desantis-dunks-on-disney-in-donor-pitch; *Florida's Governor Has Signed a Bill To Strip Disney World's Self-Government. Here's What That Means*, ASSOCIATED PRESS (Apr. 22, 2022), https://www.kcra.com/article/disney-world-self-government-explained/39786585#.

was not reestablished, re-ratified, or otherwise reconstituted by a special act or general law after November 5, 1968, is dissolved effective June 1, 2023."[20]

66. House sponsor Representative Randy Fine immediately announced: "Disney is a guest in Florida. Today we remind them. @GovDeSantis just expanded the Special Session so I could file HB3C which eliminates Reedy Creek Improvement District, a 50 yr-old special statute that makes Disney to [sic] exempt from laws faced by regular Floridians."[21]

67. That same day, Representative Fine said to the Florida House State Affairs Committee: "You kick the hornet's nest, things come up. And I will say this: You got me on one thing, this bill does target one company. It targets The Walt Disney Company."[22]

68. Governor DeSantis's memoir describes the attack on Disney with pride: "Nobody saw it coming, and Disney did not have enough time to put its

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[20] Senate Bill 6C, a bill removing an exemption for theme parks from a state law governing social media platforms, was introduced that same day and quickly passed in both chambers. Jennifer Kay, *DeSantis Set to Sign Bill Closing Disney Loophole in Tech Law*, BLOOMBERG LAW (April 21, 2022), https://news.bloomberglaw.com/us-law-week/desantis-set-to-sign-bill-closing-disney-loophole-in-tech-law.

[21] Rep. Randy Fine (@VoteRandyFine), Twitter (Apr. 19, 2022, 10:04 AM), https://twitter.com/VoteRandyFine/status/1516417533825454083.

[22] Hearing on HB 3C Before the Fla. H.R. State Affairs Comm., Special Session 2022C (Apr. 19, 2022) (remarks by Representative Randy Fine, sponsor of HB 3C, companion bill to SB 4C, starting at 1:13:00), https://www.myfloridahouse.gov/VideoPlayer.aspx?eventID=8085.

army of high-powered lobbyists to work to try to derail the bill. That the Legislature agreed to take it up would have been unthinkable just a few months before. Disney had clearly crossed a line in its support of indoctrinating very young schoolchildren in woke gender identity politics."[23]

69. The legislative process for Senate Bill 4C was highly unusual. When in the past the Florida Legislature had dissolved a special district, the bills enacting the dissolution typically specified the plan for governance and management of district assets and obligations, including bond debt, after dissolution. *See, e.g.*, Community & Military Affairs Subcommittee Bill Analysis, House Bill 4191, Fla. Leg. (2011) (describing earlier legislation that dissolved South Lake Worth Inlet District, transferred all property, assets, and debt to Palm Beach County and clarified Palm Beach's rights and responsibilities as part of the transfer, and required Palm Beach to establish an advisory committee to advise County Commissioners on management of district's former territory); Atty. Gen'l Op. 97-68 (Fla. A.G. Sept. 25, 1997), 1997 WL 592,445 (referring to special acts Chapter 91-346 and Chapter 94-429, which collectively dissolved the Port Everglades Authority special district and transferred its operations and property to Broward County).

70. Senate Bill 4C, in stark contrast, described no plan for the disposition

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[23] DeSantis, THE COURAGE TO BE FREE, *supra* note 13, ch. 12.

of RCID's assets, operations, or obligations. Nor did the bill address how RCID's roughly $1 billion in municipal bond debt would be satisfied.[24]

71. The legislative analysis accompanying the bill was cursory[25] and provided no estimate of the full economic impact of dissolving RCID. The analysis identified no constitutional issues raised by the legislation. *See* Committee on Community Affairs Bill Analysis, Senate Bill 4C, Fla. Leg. (2022).

72. On April 20, the Senate passed Senate Bill 4C. The House followed suit, without legislative findings or a statement of purpose, the very next day, in a session without debate that lasted under five minutes.[26] Orange and Osceola Counties did not have time to conduct their own analyses.[27]

73. After the vote, Senator Joe Gruters said, "Disney is learning lessons

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[24] Danielle Moran, *Barclays Says to Buy Disney District Munis Amid DeSantis Feud*, BLOOMBERG (May 6, 2022), https://www.bloomberg. com/news/articles/ 2022-05-06/barclays-says-to-buy-disney-district-munis-amid-desantis-feud.

[25] Lori Rozsa et al., *Florida Legislature Passes Bill Repealing Disney Special Tax Status*, WASH. POST (Apr. 21, 2022), https://www.washingtonpost.com/ nation/2022/04/21/florida-legislature-passes-bill-repealing-disneys-special-tax-status.

[26] Scott Powers, *Disney Government Dissolution Bill Approved Amid Chaos in House*, FLORIDA POLITICS (Apr. 21, 2022), https://floridapolitics. com/archives/ 518222-disney-government-dissolution-bill-approved-amid-chaos-in-house; Andrew Atterbury, *Florida Lawmakers Vote to Dismantle Disney's Special Privileges over 'Don't Say Gay'*, POLITICO (Apr. 21, 2022), https://www.politico. com/news/2022/04/21/florida-lawmakers-vote-to-dismantle-disneys-special-privileges-over-dont-say-gay-00026954.

[27] Rozsa et al., *supra* note 25.

and paying the political price of jumping out there on an issue."[28] The House bill's sponsor, Representative Fine, proudly confirmed that the Legislature had "looked at special districts" only because "Disney kicked the hornet's nest" by expressing a disfavored political viewpoint. "What changed," he said, was "bringing California values to Florida."[29] Christina Pushaw, then Governor DeSantis's press secretary, warned corporations that might consider expressing disfavored viewpoints, "Go woke, go broke."[30]

74. On April 22, Governor DeSantis signed both Senate Bill 4C and Senate Bill 6C. At the signing ceremony, he said, "For whatever reason, Disney got on that bandwagon. They demagogued the bill. They lied about it. … Do you know what my view is? I was very clear about saying 'You ain't influencing me. I'm standing strong right here.' … We signed the bill. And then, and incredibly, they say, 'We are going to work to repeal Parents' Rights in Florida.' And I'm just

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[28] Jacob Ogles, *Joe Gruters, Despite Special Session Votes, Still Sees a Beautiful Tomorrow with Disney*, FLORIDA POLITICS (Apr. 22, 2022), https://floridapolitics.com/archives/518669-joe-gruters-despite-special-session-votes-still-sees-a-beautiful-tomorrow-with-disney.

[29] Sarah Whitten, *Florida Republicans Vote to Dissolve Disney's Special District, Eliminating Privileges and Setting up a Legal Battle*, CNBC (Apr. 21, 2022), https://www.cnbc.com/2022/04/21/florida-set-to-dissolve-disneys-reedy-creek-special-district.html.

[30] Christina Pushaw (@ChristinaPushaw), Twitter (Apr. 21, 2022, 5:31 PM), https://twitter.com/ChristinaPushaw/status/1517254737401458690; Rozsa et al., *supra* note 25.

thinking to myself, 'You're a corporation based in Burbank, California, and you're going to marshal your economic might to attack the parents of my state?' We view that as a provocation and we are going to fight back against that."[31]

75. Because the legislation was hastily enacted with no analysis or plan for disposition of RCID's assets or obligations—let alone daily operations—markets, constituencies, and RCID employees were concerned.

76. The same day the bill was signed, credit-rating agency Fitch Ratings placed RCID's approximately $1 billion in outstanding bond debt on "rating watch negative" based on "the lack of clarity regarding the allocation" of RCID's assets and liabilities.[32]

77. Speculation spread that Orange and Osceola Counties would absorb RCID's expenses and debts. Orange County Tax Collector Scott Randolph predicted that Orange County would be saddled with RCID's obligations "the minute that Reedy Creek is dissolved," resulting in a property tax increase of 20-25%.[33] Senator Linda Stewart addressed this possibility: "Turning it over to

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[31] Governor Ron DeSantis, Remarks at Signing Ceremony for Senate Bill 4C (Apr. 22, 2022) (transcript available at https://www.rev.com/blog/transcripts/gov-desantis-holds-news-conference-in-south-florida-4-22-22-transcript).

[32] Dara Kim, *Credit Agency Places 'Rating Watch Negative' On Disney Debt*, MIAMI HERALD (Apr. 23, 2022), https://www.miamiherald.com/news/politics-government/state-politics/article260684352.html.

[33] Eric Levenson & Steve Contorno, *Ron DeSantis Says Ending Disney's Self-*

Orange County and Osceola County would create the largest property tax increase in our history. We don't want that to happen. Our residents do not want this to happen … This has not been well-thought-out."[34] At the same press conference, Senator Randolph Bracy called the plan "hare-brained" and "irresponsible," while Senator Victor Torres criticized Governor DeSantis for "bragging about raising taxes on one of the largest private companies in the state and saying government has a right to punish companies for their private business decisions."[35]

78. On May 16, residents and taxpayers in Osceola County filed a lawsuit against Governor DeSantis, alleging that the dissolution of Reedy Creek would lead to $1 to $2 billion in increased taxes for residents of Central Florida. *See* Complaint, *Foronda v. DeSantis*, No. 2022-009114-CA-01 (Fla. Cir. Ct. May 16, 2022).

79. Despite the chaos, the legislation's biggest boosters doubled down on their support. The House sponsor, Representative Fine, criticized Disney for

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Governing Status Will be a 'Process.' Here's What Might Happen Next, CNN (Apr. 27, 2022), https://www.cnn.com/2022/04/27/us/reedy-creek-disney-whats-next/index.html.

[34] *Central Florida Leaders Say Dissolving Reedy Creek Irresponsible, Not Well-Thought-Out*, WESH (May 3, 2022), https://www.wesh.com/article/dissolution-reedy-creek-improvement-district/39875725#.

[35] Senator Linda Stewart, *Press Conference on Dissolution of Reedy Creek Improvement District with Senator Stewart, Senator Bracy, and Senator Torres*, FACEBOOK (May 2, 2022), https://www.facebook.com/SenatorLindaStewart/videos/1379985162424883.

taking a position on House Bill 1557 and warned that the Company, and others like it, are "now learning in Florida, there's a cost to doing that."[36]

80. In a June 6 interview, Governor DeSantis recalled that he had warned Disney not to participate in the public debate: "I though[t] it was a mistake for Disney to get involved and I told them, 'You shouldn't get involved[;] it's not going to work out well for you.'"[37] Governor DeSantis said that he believed it was his role "as a leader" to "make sure people understand that [Disney] do[es] not run the state of Florida," adding that, "We're not going to have our leadership subcontracted out to a corporation with close ties to the [Chinese Communist Party] and that's based in Burbank, California."[38]

81. During a September 15, 2022 speech, Governor DeSantis said of Senate Bill 4C: "We took action" after Disney made "the mistake" of opposing the legislation.[39]

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[36] Zach Weissmueller & Danielle Thompson, *The Death of Walt Disney's Private Dream City?*, REASON (June 1, 2022), https://reason.com/video/2022/06/01/the-death-of-walt-disneys-private-dream-city/.

[37] *See* Leonard, *supra* note 8.

[38] Jeremiah Poff, *DeSantis Blasts Disney's 'Stupid Activism' In Defiant Defense of Florida Parental Rights Law*, WASH. EXAMINER (July 15, 2022), https://www.washingtonexaminer.com/restoring-america/community-family/desantis-blasts-disneys-stupid-activism-in-defiant-defense-of-florida-parental-rights-law.

[39] American Firebrand (@AmFirebrand), TWITTER (Sept. 15, 2022, 12:55 PM), https://twitter.com/FirebrandPAC/status/1570456289649508352 (remarks by

82. For months, no plan for implementing Senate Bill 4C was released. As late as mid-September 2022, Governor DeSantis's press secretary told reporters, "We don't have an announcement to make at the moment [about RCID] but stay tuned."[40]

83. Absent any plan addressing the scheduled dissolution of RCID, Disney and other stakeholders were left to guess at how Governor DeSantis and the Legislature might address the fallout. Florida Division of Bond Finance Director J. Ben Watkins III speculated about "a successor district."[41] But as of September 2022, high-ranking legislator Representative Daniel Perez admitted that the "timeline" for reaching a "solution" for RCID was "still uncertain."[42]

84. The months-long failure to propose a plan for the dissolution of RCID threatened Disney's operations, investments, and development plans. It also underscored the irregular process by which Governor DeSantis and the Legislature had voted to abolish the District.

Governor DeSantis at National Conservatism Conference).

[40] Forrest Saunders, *GOP Lawmakers Expect 'Solution' for Disney's Reedy Creek District Soon*, WPTV (Sept. 13, 2022), https://www.wptv.com/news/political/gop-lawmakers-expect-solution-for-disneys-reedy-creek-district-soon.

[41] Danielle Moran, *Florida's Bond Chief Sees Disney District Being Re-Established*, BLOOMBERG (July 22, 2022), https://www.bloomberg.com/news/articles/2022-07-22/florida-s-bond-chief-sees-disney-district-being-re-established.

[42] Saunders, *supra* note 40.

E. GOVERNOR DESANTIS AND THE LEGISLATURE RECONSTITUTE AND SEIZE CONTROL OF THE DISTRICT

85. In early October 2022, reports emerged that Governor DeSantis finally had developed a plan to seize control of Disney's governing body. The Director of the Florida Division of Bond Finance revealed that Governor DeSantis would install "state appointees" on RCID's board.[43] To accomplish this, Governor DeSantis would have the Legislature "create a successor agency" that would "function essentially unchanged" from the original RCID—except that the new district would operate under the Governor's thumb, "cementing a political win for the governor."[44]

86. Three months later, Governor DeSantis posted a notice to the Osceola County website indicating his "intent to seek legislation before the Florida Legislature" doing just that.[45]

87. In a statement after the notice was published, the Governor's Communications Director confirmed that the new district's board would be "state-

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[43] Gene Maddaus, *After 'Don't Say Gay,' a Weakened Disney Hopes to Limit the Damage*, VARIETY (Oct. 5, 2022), https://variety.com/2022/film/news/disney-desantis-reedy-creek-dont-say-gay-1235392328.

[44] Maddaus, *supra* note 43.

[45] *Florida Governor Ron DeSantis Reveals Plans for Reedy Creek Replacement*, DAPS MAGIC (Jan. 7, 2023), https://dapsmagic.com/2023/01/florida-governor-ron-desantis-reveals-plans-for-reedy-creek-replacement (last accessed on Apr. 26, 2023).

controlled" and heralded: "The corporate kingdom has come to an end."[46]

88. On January 31, 2023, a spokesperson for the Governor's Office announced that the Governor expected a special session of the Legislature the following week "on Reedy Creek and other items."[47]

89. Right on cue, just days later, the Florida Legislature convened a special session to introduce House Bill 9B.

90. House Bill 9B was every bit the takeover that Governor DeSantis promised. Section 2 of the bill reenacted RCID's charter but made key changes to consolidate power in the Governor. Historically, the District had been governed by a board of supervisors that "exercise[d] the powers granted to the district."[48] Under RCID's charter, board members were chosen through an election in which all landowners in the District were allotted one vote per acre of land owned in the District.[49] This structure—common in special districts for economic development throughout Florida—was no secret and was in place when Florida's Supreme Court

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46 Richard Bilbao, *Breaking: 'State-Controlled Board' Envisioned to Replace Disney's Reedy Creek*, ORLANDO BUS. J. (Jan. 6, 2023), https://bizjournals.com/orlando/news/2023/01/06/breaking-disney-reedy-creek-desantis-florida.html.

47 Jeffrey Schweers, *Governor 'Anticipates' Special Session on Disney's Reedy Creek Next Week*, ORLANDO SENTINEL (Feb. 1, 2023), https://www.orlandosentinel.com/politics/os-ne-desantis-reedy-creek-special-session-20230201-pqtn2xz6wzf6bj5q6oz4s35u6y-story.html.

48 Reedy Creek Enabling Act § 4(1).

49 Reedy Creek Enabling Act § 4(5).

long ago confirmed that RCID served a public purpose. *See Reedy Creek Imp. Dist.*, 216 So. 2d at 205-206.

91. House Bill 9B replaced that landowner-election process with a board handpicked by the Governor, subject to confirmation by the Florida Senate.[50] Once selected, board members could serve for up to 12 years.[51] The bill excluded from board service any person who, in the last three years, had worked for any organization that owns a "theme park or entertainment complex" with at least one million annual visitors.[52] It also excluded any person with a relative who had done the same.[53]

92. In one important respect, things remained unchanged: The bill left RCID's financial and contractual obligations intact. In particular, contracts that RCID entered before House Bill 9B's effective date would be unaffected, as the legislation made expressly clear. Specifically, all preexisting contracts, debts, bonds, and other liabilities "shall continue to be valid and binding on the Central Florida Tourism Oversight District in accordance with their respective terms, conditions, and covenants."[54] Underscoring the point, the bill added: "The

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50 CFTOD Charter § 4(1).

51 CFTOD Charter § 4(1).

52 CFTOD Charter § 4(2) (citing Fla. Stat. § 509.013(9)).

53 CFTOD Charter § 4(2).

54 CFTOD Charter § 1; *see also* House Bill 9B § 1 ("The provisions of this act

provisions of this act shall be liberally construed in favor of avoiding any events of default or breach under outstanding bonds or other instruments of indebtedness of the district's existing and legally valid contracts."[55]

93. House Bill 9B prevented the District's dissolution, which had been set to occur on June 1, 2023 under Senate Bill 4C. It reaffirmed the District's continued existence under a new name, however: the Central Florida Tourism Oversight District.[56]

94. House Bill 9B, like Senate Bill 4C, was a law designed to target Disney and Disney alone. It shifted the power to select the District's board from the District's landowners, including its majority landowner, Disney, to the Governor—to enable him to punish Disney for its protected speech about House Bill 1557. In comments to reporters on February 8, 2023, Governor DeSantis said of House Bill 9B: "There's a new sheriff in town and that's just the way it's going to be."[57]

95. The Legislature passed House Bill 9B within days of its special-

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shall not affect existing contracts that the district entered into prior to the effective date of this act.").

55 House Bill 9B § 1.

56 CFTOD Charter §1; House Bill 9B §7.

57 Julia Musto, *DeSantis vs. Disney: Florida Governor Declares 'There's a New Sheriff in Town'*, FOX BUSINESS (Feb. 8, 2023), https://www.foxbusiness.com/lifestyle/desantis-disney-florida-governor-new-sheriff-town.

session introduction.[58]

96. During the Florida Senate's February 10 floor session, Senator Doug Broxson underscored what was plain from the start: House Bill 9B was bare retaliation for Disney's failure to be "apolitical."[59] Senator Broxson was explicit about the bill's retaliatory intent: "We joined with the Governor in saying it was Disney's decision to go from an apolitical, safe 25,000 acres, and try to be involved in public policy. … We're saying 'you have changed the terms of our agreement, therefore we will put some authority around what you do.' And I gladly join the Governor in doing that."[60]

97. On February 27, Governor DeSantis signed House Bill 9B into law. In a related news release, the Governor praised the legislation for ending the "corporate kingdom of Walt Disney World," and "placing the district into state receivership."[61]

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[58] Bill History of House Bill 9B (2023), *available at* https://www.flsenate.gov/Session/Bill/2023B/9B/?Tab=BillHistory (last accessed April 26, 2023).

[59] Fla. Senate Floor Proceedings, Special Session 2023B (Feb. 10, 2023) (remarks by Senator Doug Broxson, starting at 1:05:00), https://www.flsenate.gov/Media/VideoPlayer?EventId=1_nty0d3lq-202302101200.

[60] *Id.*

[61] Press Release, Governor Ron DeSantis, *Governor Ron DeSantis Signs Legislation Ending the Corporate Kingdom of Walt Disney World* (Feb. 27, 2023), https://www.flgov.com/2023/02/27/governor-ron-desantis-signs-legislation-ending-the-corporate-kingdom-of-walt-disney-world; Attachment to Press Release,

98. The very next day, Governor DeSantis published his book titled *The Courage to Be Free: Florida's Blueprint for America's Revival.* To kick off the book's press tour, Governor DeSantis authored an opinion piece in The Wall Street Journal that explicitly connected House Bill 9B to Disney's speech about House Bill 1557. Criticizing what he called "left-wing activists working at [Disney's] headquarters in Burbank," Governor DeSantis focused on Disney's opposition to Florida's House Bill 1557 and said: "When corporations try to use their economic power to advance a woke agenda, they become political, and not merely economic, actors. In such an environment, reflexively deferring to big business effectively surrenders the political battlefield to the militant left. … Leaders must stand up and fight back when big corporations make the mistake, as Disney did, of using their economic might to advance a political agenda. We are making Florida the state where the economy flourishes because we are the state where woke goes to die."[62]

99. Indeed, Governor DeSantis has reaffirmed, again and again, that the

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Governor Ron DeSantis, *Dissolving the Corporate Kingdom* (Feb. 2023), https://www.flgov.com/wp-content/uploads/2023/02/Dissolving-the-Corporate-Kingdom.pdf ("More on HB 9-B can be found here.").

[62] Ron DeSantis, *Why I Stood Up to Disney: Old-fashioned Corporate Republicanism Won't Do in a World Where the Left Has Hijacked Big Business*, WALL ST. J. (Mar. 1, 2023), https://www.wsj.com/articles/why-i-stood-up-to-disney-florida-woke-corporatism-seaworld-universal-esg-parents-choice-education-defa2506.

State campaign to punish Disney for its speech about House Bill 1557 has been a coordinated and deliberate one from the start. Disney's commentary on House Bill 1557 was, he claimed, a "declaration of war" and "a textbook example of when a corporation should stay out of politics."[63]

F. AMID INCREASING RETALIATORY STATE ACTION, DISNEY AND RCID EXECUTE TWO LONG-TERM LAND USE CONTRACTS AFTER PUBLICIZED AND OPEN HEARINGS

100. Despite the State's escalating retaliation, Disney sought de-escalation, including through several attempts to spark a productive dialogue with the DeSantis Administration.

101. It was to no avail. The threatening political action and rhetoric continued—and escalated further.

102. So, amid great uncertainty, Disney and RCID sought to secure future development plans that had been mutually arranged. They executed two agreements: a Chapter 163 Development Agreement (the "Development Agreement") (*see* Exhibit A) and a Declaration of Restrictive Covenants (the "Restrictive Covenants") (*see* Exhibit B) (together, the "Contracts").

1. Development Contracts, Generally

103. Private developers face enormous risk. They invest heavily in long-term projects that depend, for their viability, on stable government oversight and

63 DeSantis, THE COURAGE TO BE FREE, *supra* note 13, ch. 12.

regulation.

104. That is especially the case for Disney, and Disney's goals with the Contracts at issue in this case underscore the point: The Company seeks to invest up to $17 billion in capital and create roughly 13,000 new jobs in the region over the next decade.[64]

105. Development and investment of this magnitude cannot effectively take place when it can be nullified or undermined at the whim of new political leadership. Thus, because a development project often extends throughout several local or state administrations with potentially differing regulatory objectives, developers commonly rely on contract law to secure their investments over time.

106. Florida understands this well. Decades ago, the Legislature specifically authorized local governments to enter into contracts with private developers through the Florida Local Government Development Agreement Act ("Development Agreement Act"). Fla. Stat. §§ 163.3220-163.3243.

107. In enacting the Development Agreement Act, the Legislature "f[ound] and declare[d]" that "[t]he lack of certainty in the approval of development can result in a waste of economic and land resources, discourage sound capital

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64 *Disney CEO Bob Iger Announces 17 Billion Investment*, BLOG MICKEY (Apr. 3, 2023), https://blogmickey.com/2023/04/disney-ceo-bob-iger-announces-17-billion-investment-13000-additional-jobs-at-walt-disney-world-over-next-decade.

improvement planning and financing, escalate the cost of ... development, and discourage commitment to comprehensive planning." Fla. Stat. § 163.3220(2). The Legislature explained that its intent in enacting the Development Agreement Act was also to "encourage a stronger commitment to comprehensive and capital facilities planning, ensure the provision of adequate public facilities for development, encourage the efficient use of resources, and reduce the economic cost of development." *Id.* § 163.3220(3). In the Legislature's own words, "This intent is effected by authorizing local governments to enter into development agreements with developers[.]" *Id.* § 163.3220(4).

108. A restrictive covenant is another type of contract that facilitates efficient, productive, and profitable long-term land use. Restrictive covenants are agreements between two parties by which one party agrees to refrain from using property in a particular manner, ultimately to the benefit of both parties. Florida enforces restrictive covenants in order to provide "the fullest liberty of contract and the widest latitude possible in disposition of one's property." *Hagan v. Sabal Palms, Inc*., 186 So. 2d 302, 308 (Fla. Dist. Ct. App. 1966).

109. As any prudent developer would do—and as many others have done, with no controversy—Disney used these tools to secure future development plans which the DeSantis Administration had already found compliant with Florida law in the Comprehensive Plan. The Contracts followed public notices in the Orlando

Sentinel—Orlando's primary newspaper with readership in the hundreds of thousands—and discussion at public hearings.

2. The District's Publicized And Open Hearings

110. On January 18, 2023, RCID issued its first public notice in the Orlando Sentinel: "NOTICE IS HEREBY GIVEN that the Reedy Creek Improvement District will hold the first of two public hearings," on January 25, 2023, "on the intent to consider a development agreement, pursuant to Chapter 163, Florida Statutes," and the publication continued with specifics about the contract terms.

111. In accordance with the Orlando Sentinel notice, RCID considered the Development Agreement at the January 25 public hearing. As reflected in the minutes of the January 25 meeting, attendees included representatives from WESH 2 News, the Orlando Sentinel, Channel 9 WFTV, Channel 6 WKMG, Telemundo, and the Orlando Business Journal.[65] The RCID District Administrator advised that "the Board is being asked to consider a proposed development agreement between the District and Walt Disney Parks and Resorts U.S., Inc. (Disney)."[66] He explained several key provisions of the Development Agreement, including that it

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65 Minutes of Meeting, at p. 1, Reedy Creek Improvement District Board of Supervisors Meeting (Jan. 25, 2023), *available at* https://www.rcid.org/about/board-of-supervisors-2/ (last accessed April 26, 2023).

66 Minutes of Meeting (Jan. 25, 2023), *supra* note 65, at p. 6.

would "[v]est[] development entitlements in Disney as the owner of the vast majority of the lands within the District and the master developer of the Walt Disney World resort."[67] The RCID board president asked if there were any public comments. There were none.[68]

112. After that discussion and opportunity for public comment, RCID gave notice that the matter would be on the agenda again for the next public meeting, set for February 8, 2023. Two days after the first public hearing, RCID published that second notice in the Orlando Sentinel: "NOTICE IS HEREBY GIVEN that the Reedy Creek Improvement District will hold the second and final of two public hearings," on February 8, 2023, "on the intent to consider a development agreement pursuant to Chapter 163, Florida Statutes," and again continuing with accompanying specifics about the contract terms.

113. In accordance with that Orlando Sentinel notice, RCID considered the matter for a second time at the February 8 public hearing. As reflected in the minutes, attendees again included representatives from several news outlets including WESH 2 News, Fox 35, the Orlando Sentinel, Channel 9 WFTV, Bloomberg, and the Orlando Business Journal.[69]

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67 *Id.* at p. 7.

68 *Id.*

69 Minutes of Meeting, at p. 1, Reedy Creek Improvement District Board of

114. The District Administrator advised that there had been no changes to the Development Agreement since its first reading at the previous meeting.[70] He added that this February 8 meeting was the second of two public hearings required to approve the Development Agreement.[71] The RCID board president asked if there were any public comments and there were none.[72] Upon a motion to approve the Development Agreement, and a second to the motion, the RCID board unanimously approved it.[73]

115. At the February 8 meeting, the District Administrator also requested board approval and authorization to sign a Declaration of Restrictive Covenants.[74] He explained that the Restrictive Covenants are "associated with the Chapter 163 Developer's Agreement."[75] He then described several provisions of the Restrictive Covenants.[76] The RCID board president asked if there were any public comments and, again, there were none.[77] Upon a motion to approve the Restrictive

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Supervisors Meeting (Feb. 8, 2023), *available at* https://www.rcid.org/about/board-of-supervisors-2/ (last accessed April 26, 2023).

70 Minutes of Meeting (Feb. 8, 2023), *supra* note 69, at p. 2.

71 *Id.*

72 *Id.*

73 *Id.*

74 *Id.* at p. 4.

75 *Id.*

76 *Id.*

77 *Id.*

Covenants, and a second to the motion, the RCID board unanimously approved them.[78]

116. Disney and RCID executed the Contracts that same day (February 8), and then recorded them in official county records.

3. The Contract Terms

117. The Contracts are interrelated, and each serves to the benefit of both Disney and the District for long-term development planning.

118. Much has been mischaracterized about the intent and effect of the Contracts. The Contracts do not undermine the CFTOD board's ability to exercise its limited governing powers. Indeed, among other things, the CFTOD board maintains the ability to (i) impose ad valorem taxes, maintenance taxes, and utility taxes (including the power to enforce collection of taxes by tax liens and foreclosure); (ii) build, operate, and maintain roads; (iii) provide emergency services; (iv) exercise the power of eminent domain; (v) maintain and operate the extensive drainage and flood control system and other utilities; (vi) adopt, supplement and enforce codes regulating building safety, elevators, escalators and similar devices, the prevention of fire hazards, plumbing and electrical installations and the like; (vii) review and approve or disapprove building permit applications; and (vii) issue general obligation bonds, revenue bonds, utility service tax bonds,

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78 *Id.*

and bond anticipation notes.

119. Rather, the Contracts reflect, in significant part, confirmations of the Comprehensive Plan that had already been reviewed by RCID and the State in July 2022.

120. The Development Agreement precludes Disney from using its land except as authorized in the Development Agreement, which permits Disney to use its lands within the District up to a defined maximum development program. Down to the square foot, the maximum development program specifies how much mixed-use commercial space for offices and retail/restaurants Disney can build through 2032. The maximum development program also approves one additional major theme park and two additional minor theme parks for construction through 2032. Finally, the maximum development program approves 14,000 additional keys for hotels and resorts.

121. Thus, the maximum development program tracks the planning set forth in the Comprehensive Plan. All development rights and entitlements, as established by the maximum development program, are vested in Disney. The Development Agreement further provides that any proposed development utilizing the maximum development program must follow the development review and approval process defined in the District's land development regulations.

122. The Development Agreement recognizes that the maximum

development program will require new or expanded facilities in public infrastructure systems and requires that the District shall fund, design, and construct those public facilities. Thus, with respect to any land owned by Disney that is needed for public facilities, Disney agrees to sell its land to the District (instead of the District having to go through condemnation proceedings) and agrees not to seek payment from the District in excess of the land's fair market value.

123. Finally, as the Development Agreement recognizes, Disney and the District previously collaborated in the procurement of federal and state level environmental permits entitling RCID land to certain unique and beneficial development rights. Specifically, Disney sought and received—primarily at Disney's expense—approvals governing the protection and relocation of threatened and endangered species and requisite mitigation for the same. Disney similarly pursued and received approval of a comprehensive and forward-looking federal dredge and fill entitlement framework, creating a site-specific wetland credit mitigation bank via the acquisition, restoration, and perpetual management of what is now known as Disney's Wilderness Preserve and Mira Lago—again at Disney's expense. Given all that, the Development Agreement confirms certain mitigation credits are vested in Disney and that Disney is solely entitled to use them.

124. For long-term stability, the Development Agreement has a duration of

30 years from its effective date and may be extended.

125. The Restrictive Covenants provide that the standards under which the District's properties exist as of the Restrictive Covenants' effective date shall be maintained. Under the Restrictive Covenants, the exterior design, appearance, and exterior aesthetic qualities of any improvements to any portion of the District's properties are subject to Disney's prior review and comment, which Disney cannot unreasonably withhold, condition, or delay.

126. In relation to the District's properties, the Restrictive Covenants provide that the District shall not use names or symbols associated with Disney without Disney's express prior written approval; use fanciful characters (such as Mickey Mouse) or other intellectual property in designs, symbols, or other representations created by Disney; sell or distribute merchandise, souvenirs, or other items referring to Disney Properties or other Disney properties or Disney logos or trademarks; or use, reproduce, sell, distribute, or display any work copyrighted by Disney.

G. GOVERNOR DESANTIS REPLACES ELECTED RCID BOARD MEMBERS WITH CFTOD POLITICAL APPOINTEES WHO EXECUTE THE RETRIBUTION CAMPAIGN AND DECLARE "VOID" DISNEY'S LAND USE CONTRACTS

127. On February 27, 2023, the date Governor DeSantis signed House Bill 9B into law and three weeks after the Contracts were executed following public notice and hearing, Governor DeSantis announced the names of the five

individuals he had selected to replace the elected members of the board.[79]

128. When Governor DeSantis addressed what he was "looking for with this board," he described, with a thinly veiled euphemism, staffing the board with people who would censor Disney's speech and discipline the Company.[80] As Governor DeSantis put it, referring to Disney, "When you lose your way, you've got to have people that are going to tell you the truth … So we hope they can get back on."[81]

129. Governor DeSantis also posited that the new board could stop Disney from "trying to inject woke ideology" into children.[82] As Governor DeSantis put it, "I think all of these board members very much would like to see the type of entertainment that all families can appreciate."[83]

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79 Press Release, Governor Ron DeSantis, *Governor Ron DeSantis Appoints Five to the Central Florida Tourism Oversight District* (Feb. 27, 2023), https://www.flgov.com/2023/02/27/governor-ron-desantis-appoints-five-to-the-central-florida-tourism-oversight-district.

80 WKMG News 6, *DeSantis Holds News Conference at Reedy Creek Fire Station*, YOUTUBE (Feb. 27, 2023), https://www.youtube.com/live/1FJR-dumaFY?t=2531 (last accessed Apr. 26, 2023).

81 Ewan Palmer, *Ron DeSantis Makes Ominous Warning About Disney's Future Creative Control*, NEWSWEEK (Feb. 28, 2023), https://www.newsweek.com/ron-desantis-disney-board-florida-reedy-creek-1784261.

82 Jonathan Chait, *DeSantis Promises Florida Will Control Disney's Content: Right-Wing Board to Clamp Down on "Woke Ideology" in Cartoons*, NEW YORK MAG. (Mar. 1, 2023), https://nymag.com/intelligencer/2023/03/desantis-promises-florida-will-control-disney-content.html.

83 *Id*.

130. The new members of the board sat for their first meeting on March 8, 2023.

131. At that meeting, one board member suggested that two cities comprising Disney's property, Bay Lake and Lake Buena Vista, should be dissolved, despite the fact that the CFTOD board has no authority or mandate to dissolve the cities. Another hinted at plans to make major changes but did not go into detail. The board also approved hiring the same legal counsel that had advised Governor DeSantis's office on House Bill 9B.

132. Following the meeting, Disney released the following statement, holding onto hope that, despite the board's origins and Governor DeSantis's directives, the board might be willing to forgo its mandate to punish Disney and focus instead on the economic welfare of the District: "'The Reedy Creek Improvement District created and maintained the highest standards for the infrastructure for the Walt Disney World Resort. We are hopeful the new Central Florida Tourism Oversight District will continue this excellent work and the new board will share our commitment to helping the local economy continue to flourish and support the ongoing growth of the resort and Florida's tourism industry.'"[84]

133. Unfortunately, CFTOD has embraced the Governor's express mission

[84] Gabrielle Russon, *Report: New Disney Governing Board Looks at Hiring Special Counsel with Ties to Reedy Creek Law*, FLORIDA POLITICS (Mar. 8, 2023),

to punish Disney for expressing disfavored viewpoints.

134. On March 29, 2023, CFTOD gathered for its second meeting. At that meeting, CFTOD members claimed that they had just discovered the Contracts (which had been publicized in the press, read out at board meetings, and recorded in county records almost two months earlier). The CFTOD's special counsel suggested that RCID should hire firms with a "deeper bench" going forward. The next CFTOD meeting was scheduled for April 19.[85]

135. On the evening of March 29, one board member denounced the "arrogance of @disney," warning that the Company has been "ignoring parents and allowing radicals to sexualize our children," and was "now ignoring Florida taxpayers by sneaking in a last minute sweetheart development agreement." Equating Disney's exercise of its rights under Florida law to enter long-term development agreements with Disney's exercise of its rights to speak on public issues, the same board member declared: "Disney has once again overplayed their hand in Florida. We won't stand for this and we won't back down."[86]

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https://floridapolitics.com/archives/593877-report-new-disney-governing-board-looks-at-hiring-special-counsel-with-ties-to-reedy-creek-law.

[85] Agenda, Central Florida Tourism Oversight District Board of Supervisors Meeting (April 19, 2023), *available at* https://www.rcid.org/about/board-of-supervisors-2/ (last accessed April 26, 2023).

[86] Bridget Ziegler (@BridgetAZiegler), TWITTER (Mar. 29, 2023, 9:36 PM), https://twitter.com/BridgetAZiegler/status/1641253049250336771 (last accessed on Apr. 26, 2023).

136. A public narrative about these Contracts quickly formed around the idea that Governor DeSantis was "caught off guard" and "had the rug pulled from under him."[87]

137. Governor DeSantis's allies, including a state representative and another CFTOD board member, in turn accused Disney of "trying to pass an 11th-hour deal in the middle of the night,"[88] and "sneaking in" the Contracts.[89] Echoing their calls, Governor DeSantis himself subsequently claimed that the Contracts were "uncovered" and "last-minute."[90]

138. None of this was true. As explained, these Contracts followed public notice—in the Orlando Sentinel, no less—and public hearings. But, despite the facts, the political story was set, and the retaliation only got worse.

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87 Alex Hammer & Emily Goodin, *'You Ain't Seen Nothing Yet': Humiliated DeSantis Vows to Hit Back at Disney after It Exploited Obscure 'Royal Clause' Loophole to Strip His New Reedy Creek Board of Its Power*, DAILY MAIL (Mar. 31, 2023), https://www.dailymail.co.uk/news/article-11922083/DeSantis-vows-not-Disney-fight-company-uses-royal-loophole.html.

88 Representative Fred Hawkins, Remarks at Governor's Press Conference (Apr. 17, 2023), https://thefloridachannel.org/videos/4-17-23-governors-press-conference (starting at 19:15).

89 Ziegler, *supra* note 86.

90 Letter from Governor Ron DeSantis to Chief Inspector General Melinda Miguel (Apr. 3, 2023); *see Florida Governor Ron DeSantis Orders Investigation of Disney Over Reedy Creek Agreement*, DAPS MAGIC (Apr. 3, 2023), https://dapsmagic.com/2023/04/florida-governor-ron-desantis-orders-investigation-of-disney-over-reedy-creek-agreement/ (published copy of letter) (last accessed on Apr. 26, 2023).

139. On April 3, Governor DeSantis lashed out at Disney by announcing the launch of a wide-ranging civil and criminal investigation. Ostensibly triggered by the State's belated discovery of the Contracts, Governor DeSantis directed his Chief Inspector General Melinda Miguel to probe "[a]ny financial gain or benefit derived by Walt Disney World as a result of RCID's actions and RCID's justifications for such actions," "[a]ll RCID board, employee, or agent communications related to RCID's actions, including those with Walt Disney World employees and agents," and several other topics. Governor DeSantis instructed Chief Inspector General Miguel to refer "[a]ny legal or ethical violations … to the appropriate authorities."[91]

140. Three days later, on April 6, Governor DeSantis stated at a public event that Disney had "tried to pull a fast one." He added, "They are not superior to the people of Florida … So come hell or high water we're going to make sure that policy of Florida carries the day. And so they can keep trying to do things. But ultimately we're going to win on every single issue involving Disney I can tell you that. … That story's not over yet. Buckle up. There's going to be more coming down the pike."[92]

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91 *Id*.

92 Gary Fineout, *'Buckle Up': DeSantis Escalates Disney Dispute, Eyes Hotel Taxes and Road Tolls*, POLITICO (Apr. 6, 2023), https://www.politico.com/news/2023/04/06/desantis-disney-hotel-taxes-toll-rodes-00090959.

141. In the question-and-answer session that followed, Governor DeSantis said that Disney is "acting like somehow that they pulled one over on the state" and that, "now that Disney has reopened this issue, we're not just going to void the development agreement they tried to do, we're going to look at things like taxes on the hotels, we're going to look at things like tolls on the roads … We're going to look at things like developing some of the property that the district owns."[93]

142. On April 7, addressing the Contracts, Governor DeSantis stated at a press conference, "Now that this has been reopened, all options are on the table. We need to make sure that people understand, whether you're an individual or you're a corporation, you don't get to play by your own rules ... I think Disney has always viewed itself as being exempt from that constitutional process. Well, those days are over here in the state of Florida." Emphasizing his control over the Legislature, he continued, "There will be additional legislative action taken in Tallahassee that will nullify what they tried to do at the 11th hour and then potentially, you know, arm the board with the ability to make sure that this is run appropriately."[94]

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[93] Steven Lemongello & Skyler Swisher, *DeSantis: I'll Kill Reedy Creek Deal, Consider Hotel Taxes, Tolls for Disney World*, ORLANDO SENTINEL (Apr. 7, 2023), https://www.orlandosentinel.com/politics/os-ne-desantis-disney-void-reedy-creek-deal-20230407-5edgygdxb5hytdzyxztwxovzwa-story.html.

[94] Ron DeSantis (@GovRonDeSantis), TWITTER (Apr. 7, 2023, 11:49 AM), https://twitter.com/GovRonDeSantis/status/1644366912200265729 (remarks at

143. On April 13, Governor DeSantis stated at a public event, "They're fighting us on this. The media's acting like Disney getting out from under. No, it's not going to happen. We'll have news on that next week. So stay tuned. There will be round two in terms of those fireworks." He added, "I don't care if Disney doesn't like it … they can take a hike."[95]

144. Governor DeSantis conveyed his total control over the CFTOD board. Speaking on an Orlando radio program on April 17, Governor DeSantis warned that the CFTOD board would be meeting a few days later to "make sure Disney is held accountable."[96]

145. On April 17, Governor DeSantis convened a press conference to discuss next steps in the campaign against Disney. The steps included legislation and the Legislative Declaration by CFTOD.

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press conference in Marion County, starting at 36:48) (last accessed on Apr. 26, 2023).

[95] *Governor DeSantis Delivers Keynote Speech at GOP Meeting of Butler County, Ohio*, YOUTUBE (Apr. 13, 2023), https://www.youtube.com/watch?v=ygZTdVKMvvM (remarks by Governor DeSantis, at 10:04 & 28:50); A.G. Gancarski, *Ron DeSantis Promises 'Round 2' in Fight with Disney*, FLORIDA POLITICS (Apr. 13, 2023), https://floridapolitics.com/archives/603259-ron-desantis-promises-round-2-in-fight-with-disney.

[96] Steve Contorno, *DeSantis Threatens Retaliation over Disney's Attempt to Thwart State Takeover*, CNN (Apr. 17, 2023), https://www.cnn.com/2023/04/17/politics/desantis-disney-takeover-florida/index.html.

146. He described the legislation as a bill that would "make sure that people understand that you don't get to put your own company over the will of the people of Florida." He added that efforts were underway to give the state new authority to override safety inspections at Walt Disney World, as well as to regulate Disney's monorail transportation systems. Describing what his administration would do with land taken from Disney's control, he mused, "People are like: 'What should we do with this land?' People have said, maybe create a state park, maybe try to do more amusement parks, someone even said, like, maybe you need another state prison. Who knows? I just think that the possibilities are endless[.]"[97] Governor DeSantis warned, "I look forward to the additional actions that the state control board will implement in the upcoming days."[98]

147. Representative Carolina Amesty took the podium after Governor

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[97] Ron DeSantis (@GovRonDeSantis), Twitter (Apr. 17, 2023, 12:57 PM), https://twitter.com/GovRonDeSantis/status/1648007909333417985 ("Governor DeSantis Provides an Update on Florida's Response to Disney," remarks at 9:14) (last accessed on Apr. 26, 2023); Emma Colton, *DeSantis Fires Back at Disney as Company Tries to 'Usurp' State Oversight*, FOX NEWS (Apr. 17, 2023), https://www.foxnews.com/politics/desantis-fires-back-disney-company-tries-usurp-state-oversight.

[98] Press Release, Governor Ron DeSantis, *Governor Ron DeSantis Announces Legislative Action to Rebuke Disney's Last-Ditch Attempt to Defy the Legislature and the State of Florida* (Apr. 17, 2023), https://www.flgov.com/2023/04/17/governor-ron-desantis-announces-legislative-action-to-rebuke-disneys-last-ditch-attempt-to-defy-the-legislature-and-the-state-of-florida.

DeSantis concluded his remarks. She reiterated the connection between the threatened board actions and Disney's protected speech: "Let it be known, across this great nation that here, in the free state of Florida, it is 'We the People,' not 'woke' corporations."[99] Representative Amesty continued, "We all love Disney; however, you cannot indoctrinate our children. Instead, they have turned Disney into this corporate PR arm of a small group of extremists who want to indoctrinate our children with radical gender ideologies that have no basis in science, common sense, or basic human decency."[100] In conclusion, Representative Amesty warned, "As our great Governor has said, Florida is a place where woke goes to die."[101]

148. Senator Blaise Ingoglia spoke next. He threatened, "I know this Governor, and I know this Governor well, so I have a couple words for Disney: 'You are not going to win this fight. This Governor will.'"[102]

149. At the conclusion of the press conference, Governor DeSantis stated, "Stay tuned. We've got more coming up."[103]

150. The Governor's office issued a press release later that day,

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99 Ron DeSantis (@GovRonDeSantis), Twitter (Apr. 17, 2023, 12:57 PM), https://twitter.com/GovRonDeSantis/status/1648007909333417985 (remarks of Representative Carolina Amesty, at 21:42-21:51) (last accessed on Apr. 26, 2023).

100 *Id.* at 22:03-22:23.

101 *Id.* at 23:43-23:49.

102 *Id.* (remarks of Senator Blaise Ingoglia) at 25:00-25:10.

103 *Id.* (remarks of Governor DeSantis) at 33:27-33:32.

announcing, "Disney's corporate kingdom is over," and that "the agreements will be nullified by new legislation that I intend to execute. … I look forward to the additional actions that the state control board will implement in the upcoming days."[104]

151. The CFTOD met for its third meeting on April 19.

152. At the meeting, CFTOD's outside counsel attacked Disney's exercise of development contract rights and proclaimed that Disney's "efforts are illegal, and they will not stand"—even though he acknowledged that it is "well established under Florida law that a development agreement and a restrictive covenant" are "contract[s]" and are "governed by the law of contract."[105] CFTOD's counsel also admitted that Disney "did publish notice … in the newspaper" before entering into the Development Agreement.[106]

153. When the CFTOD chair asked CFTOD's counsel "what action he recommends that the board take," the board's special counsel recommended that the board move to direct counsel to prepare "a resolution" for consideration at the

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104 Press Release, Governor Ron DeSantis, *Governor Ron DeSantis Announces Legislative Action to Rebuke Disney's Last-Ditch Attempt to Defy the Legislature and the State of Florida* (Apr. 17, 2023), https://www.flgov.com/2023/04/17/governor-ron-desantis-announces-legislative-action-to-rebuke-disneys-last-ditch-attempt-to-defy-the-legislature-and-the-state-of-florida/.

105 Transcript of Record, Central Florida Tourism Oversight District Board of Supervisors Meeting (Apr. 19, 2023) at 63:10; 71:5-8.

106 *Id.* at 67:25.

board's April 26 meeting that would (1) declare the Contracts void *ab initio*, (2) make findings of fact in support thereof, and (3) direct action as need to assert CFTOD's positions on these issues. A motion in support of this action passed with unanimous support.[107]

154. The same day, the board published the agenda for the April 26 meeting. The agenda included a single item under "New Business," labeled "Approval of legislative findings regarding and declare the Development Agreement and Declaration of Restrictive Covenants entered into by Reedy Creek Improvement District and Walt Disney Parks and Resorts U.S. void *ab initio* and direction to litigation counsel regarding same."[108]

155. On April 24, CFTOD published proposed "legislative findings" for its predetermined voiding of the Contracts. The purported findings assert a scattershot collection of alleged contract infirmities and then declare the Contracts to be "void and unenforceable."[109]

156. Going further, the legislative findings and declaration attack the Comprehensive Plan, even though the State, itself, found the plan in compliance

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107 *Id.* at 117:4-15.

108 *Id.* at 117:16-21.

109 CFTOD BOS April 26, 2023 Package, Central Florida Tourism Oversight District Board of Supervisors (April 26, 2023), *available at* https://www.rcid.org/about/board-of-supervisors-2/ (last accessed April 26, 2023).

with Florida law months ago. The legislative findings and declaration also target certain land development regulation amendments that were recently adopted. CFTOD gave no prior notice of its intent to void the Comprehensive Plan or the regulation amendments.

157. The purpose and effect of this exercise of power is the same as the legislation and executive activity that has been deployed for over a year—to punish Disney for expressing a certain view.

158. On April 26, just as CFTOD previewed it would do the week before, the CFTOD board unanimously approved the legislative findings and declaration, declaring that the Contracts were "void and unenforceable."

159. For extra measure, the Florida Legislature has recently advanced legislation attacking the Contracts—prohibiting their enforcement unless the CFTOD board were to readopt them. *See* House Bill 439 (2023) and Senate Bill 1604 (2023). Underscoring the State's coordinated efforts, CFTOD's legislative findings and declaration conclude: "[T]he Board has no desire to readopt or ratify [the Contracts]."[110] Indeed, the Legislature does not seem intent on moderating its retaliatory campaign any time soon. Recently proposed legislation would require oversight of monorail and other fixed-guideway transportations systems "located

[110] CFTOD BOS Package, Central Florida Tourism Oversight District Board of Supervisors (April 26, 2023), *available at* https://www.rcid.org/about/board-of-supervisors-2/ (last accessed April 26, 2023).

within an independent special district created by local act which have boundaries within two contiguous counties"—a transparent attack on Disney, and Disney alone. Senate Bill 1250 (2023). The legislation would even give the State authority to shut down systems during inspection. *Id.*

160. Having exhausted all other options, Disney is left with no choice but to bring this complaint asking the Court to stop the State of Florida from weaponizing the power of government to punish private business.

FIRST CAUSE OF ACTION
CONTRACTS CLAUSE VIOLATION
(U.S. Const. art I, § 10, cl. 1, amend. XIV; 42 U.S.C. § 1983; Declaratory Judgment Act, 28 U.S.C. §§ 2201-2202)

161. Disney realleges and incorporates by reference all preceding paragraphs.

162. CFTOD's abrogation of the Contracts violates Disney's rights under the U.S. Constitution, article I, section 10, clause 1, known as the "Contracts Clause." The Contracts Clause provides that "[n]o State shall ... pass any ... Law impairing the Obligation of Contracts."

163. The Contracts Clause prohibits local government entities from abrogating their own contracts with private entities. *See*, *e.g.*, *Vicksburg Waterworks Co. v. Vicksburg*, 185 U.S. 65 (1902); *Walla Walla City v. Walla Walla Water Co.*, 172 U.S. 1 (1898); *Los Angeles v. Los Angeles City Water Co.*, 177 U.S. 558 (1900); *New Orleans Water Works Co. v. Rivers*, 115 U.S. 674

(1885); *Murray v. Charleston*, 96 U.S. 432 (1877); *E & E Hauling, Inc. v. Forest Preserve District*, 613 F.2d 675 (7th Cir. 1980); *Welch v. Brown*, 935 F. Supp. 2d 875 (E.D. Mich. 2013). A law that impairs a government entity's own contracts with a private actor is especially suspect and hence subject to heightened judicial scrutiny. *U.S. Trust Co. of N.Y. v. New Jersey*, 431 U.S. 1, 25-26 (1977).

164. The rights protected by the Contracts Clause are familiar to Florida law. Indeed, the Florida Supreme Court has pronounced the "right to contract" to be "one of the *most sacrosanct rights* guaranteed by our fundamental law." *Chiles v. United Faculty of Fla.*, 615 So. 2d 671, 673 (Fla. 1993) (emphasis added).

165. The Legislative Declaration violates that most sacrosanct right and thus deprives Disney of its rights under the Contracts Clause. By declaring the Contracts void, the Legislative Declaration purports to rescind Disney's rights and protections under contracts and to relieve CFTOD of any obligation to comply with its obligations under the Contracts or to pay damages for any breaches.

166. The substantial—indeed, total—impairment of Disney's contract rights was not "necessary" to serve an "important" government interest, as required to survive Contracts Clause scrutiny. *U.S. Trust*, 431 U.S. at 25-26. As alleged in this Complaint, the Contracts were abrogated as part of an explicit campaign of official government retaliation against Disney for expressing a viewpoint the

Governor and Legislature disagreed with. That objective is the opposite of important—it is categorically impermissible.

167. Any other asserted reasons for abrogating the Contracts are pretextual. RCID was fully empowered to enter into the Contracts. Special districts commonly enter into contracts with developers, including special districts with governing structures defined by land ownership. And the law establishing CFTOD expressly provides that all preexisting RCID contracts remain fully enforceable. CFTOD Charter § 1.

168. Just as in other long-term development contracts in other special districts, the Contracts here involve land-use rights and obligations, not sovereign or police powers that special districts are legally barred from delegating. The Contracts establish Disney's rights concerning use of its own property and, as expressly authorized by RCID's charter, restrict CFTOD from using its own property for non-public purposes that interfere with Disney's development of its property. Reedy Creek Enabling Act § 9 (authorizing RCID to subject its land to "encumbrance"). In exchange, the Contracts restrict Disney's use of its own property to specified development purposes and obligate Disney to convey its property at fair market value when needed for public purposes.

169. CFTOD has identified no reason or need to treat the Contracts differently from long-term development agreements entered into by developers in other special districts.

170. Even if CFTOD could articulate an "important" interest uniquely implicated by the Contracts that is not implicated by other special district development contracts, CFTOD cannot show that complete abrogation of the contracts is "necessary" to serve any such interest. Under the Contracts Clause, the government "is not free to impose a drastic impairment when an evident and more moderate course would serve its purpose equally well." *U.S. Trust*, 431 U.S. at 30-31. An impairment of a contract thus is prohibited if "a less drastic modification would have permitted" the government to advance its purpose while allowing the contract to remain in place. *Id*. CFTOD has not identified any important government interest justifying its abrogation at all, much less an important interest that cannot be satisfied by modifying some provision or provisions of the Contracts.

171. CFTOD's decision to abrogate the Contracts completely, rather than pursue modification of whatever provisions CFTOD claims to be unlawful, underscores its motivation to punish Disney for its political speech rather than to operate as a good-faith counterparty in the continued development of the District.

172. Disney is entitled to a declaration that abrogation of the Contracts

violates Disney's rights under the Contracts Clause and that the Contracts remain in effect and enforceable. Disney is further entitled to an order enjoining Defendants from enforcing the Legislative Declaration.

SECOND CAUSE OF ACTION
TAKINGS CLAUSE VIOLATION
(U.S. Const. amend. V, amend. XIV; 42 U.S.C. § 1983; Declaratory Judgment Act, 28 U.S.C. §§ 2201-2202)

173. Disney realleges and incorporates by reference all preceding paragraphs.

174. The Legislative Declaration takes Disney's property without providing just compensation, in violation of the Takings Clause of the Fifth Amendment to U.S. Constitution. The Takings Clause provides: "[N]or shall private property be taken for public use, without just compensation." U.S. Const. amend V.

175. "Contract rights are a form of property and as such may be taken for a public purpose provided that just compensation is paid." *U.S. Trust*, 431 U.S. at 19 n.16; *see also Lynch v. United States*, 292 U.S. 571, 579 (1934); *Contributors to Pennsylvania Hospital v. Philadelphia*, 245 U.S. 20 (1917). Not all contract rights necessarily qualify as "property" under the Takings Clause, and thus "the fact that legislation disregards or destroys existing contractual rights does not always transform the regulation into an illegal taking." *Connolly v. PBGC*, 475 U.S. 211, 224 (1986). But when a law overrides "substantive" contract rights in "specific"

real property, the Clause's protections apply. *Louisville Joint Stock Land Bank v. Radford*, 295 U.S. 555, 590 (1935); *see Pennsylvania Coal Co. v. Mahon*, 260 U.S. 393 (1922) (regulation overriding contractual right to mine land invalid under Takings Clause).

176. The Contracts secure valuable substantive rights in specific property, *i.e.*, the parcels explicitly identified in the Contracts. The Development Agreement, for example, grants Disney various long-term rights in the use and development of its land, consistent with the Comprehensive Plan found compliant with Florida law by DeSantis Administration. The Restrictive Covenants likewise protect Disney's rights to develop its land by limiting CFTOD's ability to use its adjacent lands in ways that damage or destroy Disney's development rights. *Cf. Stop the Beach Renourishment, Inc. v. Fla. Dep't of Envl. Prot.*, 560 U.S. 702, 713 (2010) (Scalia, J., concurring) ("when the government uses its own property in such a way that it destroys private property, it has taken that property"). The Legislative Declaration expressly deprives Disney of those valuable rights in private property without making any payment to Disney in exchange for the deprivation. The Legislative Declaration thus takes Disney's property without just compensation.

177. Disney is entitled to a declaration that the taking of Disney property rights without payment of just compensation violates the Takings Clause and that

the property rights set forth in the Contracts remain in effect and enforceable. Disney is further entitled to an order enjoining Defendants from enforcing the Legislative Declaration.

THIRD CAUSE OF ACTION
DUE PROCESS CLAUSE VIOLATION
(U.S. Const. amend. XIV; 42 U.S.C. § 1983;
Declaratory Judgment Act, 28 U.S.C. §§ 2201-2202)

178. Disney realleges and incorporates by reference all preceding paragraphs.

179. The Legislative Declaration abrogates the Contracts without any rational basis and for only impermissible reasons, in violation of the Due Process Clause of the Fourteenth Amendments to the U.S. Constitution. The Due Process Clause provides: "[N]o person shall be … deprived of life, liberty, or property, without due process of law[.]"

180. The Due Process Clause forbids any state or local entity from adopting any "arbitrary and irrational" legislative act affecting a person's state-created rights—including property interests. *Kentner v. City of Sanibel*, 750 F.3d 1274, 1279-80 (11th Cir. 2014); *see Lewis v. Brown*, 409 F.3d 1271, 1273 (11th Cir.2005). In other words, "states must demonstrate that they are violating private interests only as necessary to promote state interests." *McKinney v. Pate*, 20 F.3d 1550, 1557 n.9 (11th Cir. 1994).

181. CFTOD cannot make that showing here. As alleged in this

Complaint, the Legislative Declaration purporting to abrogate the Contracts was not enacted for any legitimate state interest. It was instead enacted to further an official State campaign of retaliation against Disney for expressing a viewpoint that Governor DeSantis and his legislative allies disagree with.

182. Further, CFTOD does not and cannot demonstrate that complete abrogation of the Contracts is reasonably necessary to advance any state interest that could be legitimate. CFTOD cannot show that the Contracts are dissimilar in character to contracts between other developers and special districts to fix long-term development rights and obligations. Nor can CFTOD show that the Contracts contradict any aspect of Comprehensive Plan found compliant by the State. CFTOD thus cannot identify a non-arbitrary, rational basis for singling out and voiding the Contracts.

183. Disney is entitled to a declaration that the arbitrary and irrational voiding of the Contracts violates the Due Process Clause and that the Contracts remain in effect and enforceable. Disney is further entitled to an order enjoining Defendants from enforcing the Legislative Declaration.

FOURTH CAUSE OF ACTION
FIRST AMENDMENT VIOLATION
(U.S. Const. amend. I, amend. XIV; 42 U.S.C. § 1983; Declaratory Judgment Act, 28 U.S.C. §§ 2201-2202)

184. Disney realleges and incorporates by reference all preceding paragraphs.

185. Disney's public statements on House Bill 1557 are fully protected by the First Amendment, which applies with particular force to political speech. *See Citizens United v. Federal Election Commission*, 558 U.S. 310, 342 (2010). Speech such as Disney's, on public issues and petitions to the government, "occup[y] the core of the protection afforded by the First Amendment." *McIntyre v. Ohio Elections Comm'n*, 514 U.S. 334, 346 (1995); *see also Warren v. DeSantis*, __ F. Supp. 3d __, 2022 WL 6250952, at *4 (N.D. Fla. 2022) (First Amendment protects speech "intended to influence public opinion and, in turn, any proposed legislation").

186. CFTOD's retaliatory interference with the Contracts, via the Legislative Declaration and its predicates, has chilled and continues to chill Disney's protected speech. *Bennett v. Hendrix*, 423 F.3d 1247, 1254 (11th Cir. 2005) (discussing action that "would likely deter a person of ordinary firmness from the exercise of First Amendment rights."). This unconstitutional chilling effect is particularly offensive here due to the clear retaliatory and punitive intent that has motivated CFTOD's actions, at the Governor's directive. *See Bailey v. Wheeler*, 843 F.3d 473, 486 (11th Cir. 2016) ("Our First Amendment demands that a law-enforcement officer may not use his powerful post to chill or punish speech he does not like.").

187. Disney has a significant interest in its own contracts, which have been

directly targeted by the Legislative Declaration. Disney faces concrete, imminent, and ongoing injury as a result of the contractual impairment.

188. CFTOD's actions were motivated by retaliatory intent. On April 17, Governor DeSantis warned that the CFTOD board would be meeting a few days later to "make sure Disney is held accountable." Later that day, Governor DeSantis announced, "I look forward to the additional actions that the state control board will implement in the upcoming days." Governor DeSantis has let no doubt be harbored as to the impetus for his punishment. He wrote in an article to promote his book, "When corporations try to use their economic power to advance a woke agenda, they become political, and not merely economic, actors. … Leaders must stand up and fight back when big corporations make the mistake, as Disney did, of using their economic might to advance apolitical agenda."

189. There is no rational basis to invalidate the Contracts, and the purported justifications for doing so are pretextual.

190. Because the Legislative Declaration retaliates against Disney for its protected speech, Disney is entitled to a declaratory judgment that the Legislative Declaration is unconstitutional and an order enjoining Defendants from enforcing it.

FIFTH CAUSE OF ACTION
FIRST AMENDMENT VIOLATION
(U.S. Const. amend. I, amend. XIV; 42 U.S.C. § 1983;
Declaratory Judgment Act, 28 U.S.C. §§ 2201-2202)

191. Disney realleges and incorporates by reference all preceding paragraphs.

192. As discussed, Disney's public statements on HB 1557 are fully protected by the First Amendment, which applies with particular force to political speech. *See McIntyre*, 514 U.S. at 346.

193. The retaliatory reconstitution of Disney's governing body's structure through the enactments of Senate Bill 4C and House Bill 9B have chilled and continue to chill Disney's protected speech. *See Bennett*, 423 F.3d at 1254. This unconstitutional chilling effect is particularly offensive due to the clear retaliatory and punitive intent that motivated the Governor's and the Legislature's actions. *See Bailey*, 843 F.3d at 486.

194. Disney has a significant interest in its governing body's composition and structure, which has been directly targeted by the enactment of legislation providing for its complete revision. Disney faces concrete, imminent, and ongoing injury as a result of CFTOD's new powers and composition.

195. Senate Bill 4C and House Bill 9B were motivated by retaliatory intent. Governor DeSantis would not have promoted or signed, and the Legislature would not have enacted either bill, but for their desire to punish Disney for its

speech on an important public issue. *See Warren*, 2022 WL 6250952, at *2 (crediting "sources of information about the Governor's motivation" for suspending a prosecutor, including a tweet from the Governor's press secretary and comments during the Governor's announcement of the suspension).

196. Governor DeSantis called on the Legislature to extend its special session for the express purpose of enacting Senate Bill 4C the very day after Disney made a statement about House Bill 1557. He repeatedly and publicly stated that he was "fight[ing] back" for Disney's criticism of House Bill 1557, including at the bill-signing ceremony. Key legislators publicly acknowledged that Senate Bill 4C targeted Disney.

197. The law's passage was highly irregular. The bill was added to a special session convened for other purposes even though there was no emergency that would justify such rushed treatment: RCID had existed for decades, and Senate Bill 4C did not propose dissolution until June 2023. The bill passed only three days after identical bills were simultaneously introduced in the House and Senate. There was no debate in the House. Stakeholders did not have time to conduct their own analyses. And no concrete plan to effectuate the dissolution of RCID, or address the ramifications of doing so, was proposed in the months following the legislation's hasty enactment. *See Vill. of Arlington Heights v. Metro. Hous. Dev. Corp.*, 429 U.S. 252, 267 (1977) ("Departures from the normal

procedural sequence also might afford evidence that improper purposes are playing a role. Substantive departures too may be relevant, particularly if the factors usually considered important by the decisionmaker strongly favor a decision contrary to the one reached.").

198. The circumstances surrounding the passage of House Bill 9B reveal the same retaliatory targeting. Again, a special session was convened and the Legislature passed the bill within days of its introduction. During the Senate's floor session, Senator Doug Broxson confirmed that the bill was punishment for Disney failing to be "apolitical." Senator Broxson said, "We joined with the Governor in saying it was Disney's decision to go from an apolitical, safe 25,000 acres, and try to be involved in public policy. ... We're saying 'you have changed the terms of our agreement, therefore we will put some authority around what you do.'" Governor DeSantis, in a recent article, gave the following context for House Bill 9B: "When corporations try to use their economic power to advance a woke agenda, they become political, and not merely economic, actors … Leaders must stand up and fight back when big corporations make the mistake, as Disney did, of using their economic might to advance apolitical agenda."

199. There are no rational bases for either Senate Bill 4C or House Bill 9B, and the purported justifications for both are pretextual.

200. Because both pieces of legislation retaliate against Disney for its

protected speech, Disney is entitled to a declaratory judgment that the laws are unconstitutional and an order enjoining Defendants from enforcing them.

PRAYER FOR RELIEF

Plaintiff respectfully requests that this Court grant the following relief:

A. Declare that the Legislative Declaration is unlawful and unenforceable because it abrogates Disney's rights in violation of the Contracts Clause;

B. Declare that the Legislative Declaration is an unlawful taking of Disney's property rights without payment of just compensation in violation of the Takings Clause;

C. Declare that the Legislative Declaration is unlawful and unenforceable because it was an arbitrary and irrational voiding of the Development Agreement and Restrictive Covenants in violation of the Due Process Clause;

D. Declare that the Legislative Declaration is unlawful and unenforceable because it was enacted in retaliation for Disney's speech in violation of the First Amendment;

E. Declare that the Contracts remain in effect and enforceable;

F. Declare that Senate Bill 4C and House Bill 9B are unlawful and unenforceable because they were enacted in retaliation for Disney's political speech in violation of the First Amendment;

G. Issue an order enjoining Defendants from enforcing the Legislative Declaration;

H. Issue an order enjoining Defendants from enforcing Senate Bill 4C and House Bill 9B;

I. Award Plaintiff its attorney's fees and costs; and

J. Grant such other relief as this Court may deem just and proper.

Dated: April 26, 2023

Respectfully submitted.

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IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF FLORIDA

WALT DISNEY PARKS AND RESORTS U.S., INC.,

Plaintiff,

v.

RONALD D. DESANTIS, in his official capacity as Governor of Florida; MEREDITH IVEY, in her official capacity as Acting Secretary of the Florida Department of Economic Opportunity; MARTIN GARCIA, in his official capacity as Board Chair of the Central Florida Tourism Oversight District; MICHAEL SASSO, in his official capacity as Board Member of the Central Florida Tourism Oversight District; BRIAN AUNGST, JR., in his official capacity as Board Member of the Central Florida Tourism Oversight District; RON PERI, in his official capacity as Board Member of the Central Florida Tourism Oversight District; BRIDGET ZIEGLER, in her official capacity as Board Member of the Central Florida Tourism Oversight District; and JOHN CLASSE, in his official capacity as Administrator of the Central Florida Tourism Oversight District,

Defendants.

Case No.
4:23-cv-00163-MW-MJF

FIRST AMENDED COMPLAINT

FOR DECLARATORY AND INJUNCTIVE RELIEF

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Plaintiff Walt Disney Parks and Resorts U.S., Inc. ("Disney" or the "Company"), the owner and operator of the Walt Disney World Resort ("Walt Disney World") in Central Florida, alleges in support of its First Amended Complaint for Declaratory and Injunctive Relief as follows:

INTRODUCTION

"*[T]his all started, of course, with our parents' rights bill*."
—Governor Ronald D. DeSantis, May 5, 2023.

1. For more than half a century, Disney has made an immeasurable impact on Florida and its economy, establishing Central Florida as a top global tourist destination and attracting tens of millions of visitors to the State each year. People and families from every corner of the globe have traveled to Walt Disney World because of the unrivaled guest experience it provides and the deep emotional connection that generations of fans have with Disney's timeless stories and characters.

2. A targeted campaign of government retaliation—orchestrated at every step by Governor DeSantis as punishment for Disney's protected speech—now threatens Disney's business operations, jeopardizes its economic future in the region, and violates its constitutional rights.

3. The State's actions over the last two weeks are the latest strikes. At the Governor's bidding, the State's oversight board has purported to "void" publicly noticed and duly agreed development contracts, which had laid the

foundation for billions of Disney's investment dollars and thousands of jobs. Days later, the State Legislature enacted and Governor DeSantis signed legislation rendering these contracts immediately void and unenforceable. These government actions were patently retaliatory, patently anti-business, and patently unconstitutional. But the Governor and his allies have made clear they do not care and will not stop. The Governor recently declared that his team would not only "void the development agreement"—just as the State has now done, twice—but also planned "to look at things like taxes on the hotels," "tolls on the roads," "developing some of the property that the district owns" with "more amusement parks," and even putting a "state prison" next to Walt Disney World. "Who knows? I just think the possibilities are endless," he said.

4. Disney regrets that it has come to this. But having exhausted efforts to seek a resolution, the Company is left with no choice but to file this lawsuit to protect its cast members, guests, and local development partners from a relentless campaign to weaponize government power against Disney in retaliation for expressing a political viewpoint unpopular with certain State officials.

5. Disney is enormously proud of the foundational role it has played in creating Central Florida's tourism industry. The Reedy Creek Improvement District ("RCID" or the "District"), Disney's local governing jurisdiction, was integral to its success from the beginning—in 1967.

6. Fast forward five decades, and Disney today is an unparalleled engine for economic growth in the State. Among other distinctions, Disney is one of Central Florida's largest taxpayers, with more than $1.1 billion paid in state and local taxes last year. Disney is also one of the largest employers in the State, with more than 75,000 cast members.

7. The State of Florida has flourished in the years since Walt Disney himself surveyed many acres of swampland in 1963 and dreamed the possibility of Walt Disney World. Florida's elected officials have long understood how consequential Disney is to the State's economy and future, just as Disney has sought to be a constructive, responsible, and charitable Florida resident.

8. Governor DeSantis and his allies paid no mind to the governing structure that facilitated Reedy Creek's successful development until one year ago, when the Governor decided to target Disney. There is no room for disagreement about what happened here: Disney expressed its opinion on state legislation and was then punished by the State for doing so.

9. Governor DeSantis announced that Disney's statement had "crossed the line"—a line evidently separating permissible speech from intolerable speech—and launched a barrage of threats against the Company in immediate response. Since then, the Governor, the State Legislature, and the Governor's handpicked local government regulators have moved beyond threats to official

action, employing the machinery of the State in a coordinated campaign to damage Disney's ability to do business in Florida. State leaders have not been subtle about their reasons for government intervention. They have proudly declared that Disney deserves this fate because of what Disney said. Indeed, just days ago, reaffirming the unequivocal intent of his retribution campaign and trumpeting its perceived success, Governor DeSantis openly celebrated: "Since our skirmish last year, Disney has not been involved in any of those issues. They have not made a peep."

10. This is as clear a case of retaliation as this Court is ever likely to see.

11. At the Governor's behest, the State Legislature first voted to dissolve the long-standing RCID, then ultimately voted to give near-complete control of RCID to the Governor himself. As the Florida representative who introduced the Reedy Creek dissolution bill declared to the Florida House State Affairs Committee: "You kick the hornet's nest, things come up. And I will say this: You got me on one thing, this bill does target one company. It targets The Walt Disney Company."

12. Disney has never wanted a fight with the Florida government. The Company sought to de-escalate the matter for nearly a year, trying several times to spark a productive dialogue with the DeSantis Administration. To no avail.

13. Amid great uncertainty about the lengths to which the State would go to keep punishing Disney for its views, RCID and the Company gave public notice,

in January 2023, that they would enter into contracts to secure future development for the District and Walt Disney World—contracts that implemented a comprehensive plan for the District that the DeSantis Administration itself had found compliant with Florida law months earlier.

14. Through the development plan and implementing contracts, Disney set huge goals for itself and laid foundations for spectacular economic growth in Central Florida. Disney plans to invest over $17 billion in Walt Disney World over the next decade. The Company estimates that those investments will create 13,000 new Disney jobs in that same 10-year time period.

15. Big goals aside, these contracts are land use agreements between a developer and its local regulator. They are similar in character to contracts between other developers and special districts to fix long-term development rights and obligations, thereby facilitating the certainty needed to ensure investment and effective commercial progress. Contrary to misunderstandings and mischaracterizations by some government leaders, they do not undermine the newly constituted Central Florida Tourism Oversight District ("CFTOD" or the "District") board's ability to govern and exercise authority, including by imposing taxes, exercising the power of eminent domain, approving or disapproving building permit applications (including for the projects carried out pursuant to the

development agreement), building roads, providing emergency services, or issuing bonds.

16. Moreover, nothing about these contracts was a surprise: They were discussed and approved after open, noticed public forums in compliance with Florida law. And in the very same legislation that replaced the elected board governing Disney with board members picked by the Governor, the State Legislature reaffirmed the enforceability of all prior contracts, including those here.

17. Disney takes seriously its responsibility to shareholders, employees, and the many residents and local businesses in Central Florida whose livelihoods depend on Walt Disney World. And Disney now is forced to defend itself against a State weaponizing its power to inflict political punishment.

18. It is a clear violation of Disney's federal constitutional rights—under the Contracts Clause, the Takings Clause, the Due Process Clause, and the First Amendment—for the State to inflict a concerted campaign of retaliation because the Company expressed an opinion with which the government disagreed. And it is a clear violation of these rights for the CFTOD board and the State Legislature to declare CFTOD's own legally binding contracts void and unenforceable. Disney thus seeks relief from this Court in order to carry out its long-held business plans.

19. Disney finds itself in this regrettable position because it expressed a viewpoint the Governor and his allies did not like. Disney wishes that things could have been resolved a different way. But Disney also knows that it is fortunate to have the resources to take a stand against the State's retaliation—a stand smaller businesses and individuals might not be able to take when the State comes after them for expressing their own views. In America, the government cannot punish you for speaking your mind.

PARTIES

20. Walt Disney Parks and Resorts U.S., Inc. is a Florida corporation with its principal place of business in Orange County, Florida. Disney owns and operates Walt Disney World in Central Florida. Guests from around the world visit to enjoy a Disney vacation, where family members of all ages laugh, play, and learn together.

21. Defendant Ronald D. DeSantis is the Governor of Florida. Governor DeSantis called on the Legislature to pass bills to punish Disney for its speech—among others, a bill dissolving the Reedy Creek Improvement District ("RCID" or the "District"), and another installing a Governor-selected oversight board. He signed into law Senate Bill 4C (2022) and House Bill 9B (2023) and appointed the members of the newly constituted Central Florida Tourism Oversight District ("CFTOD" or the "District") board, Disney's local regulator. Fla. Const., art. IV,

§ 1; Senate Bill 4-C, Fla. Laws ch. 2022-266 (amending Fla. Stat. § 189.0311) ("Senate Bill 4C"); House Bill 9-B, Fla. Laws ch. 2023-5 ("House Bill 9B"); Fla. Laws ch. 2023-5 ("CFTOD Charter") § 4(1). He also signed into law Senate Bill 1604 (2023), legislation voiding the contracts at issue here. Senate Bill 1604, Fla. Laws ch. 2023-31 ("Senate Bill 1604"). He is sued in his official capacity.

22. Defendant Meredith Ivey is the Acting Secretary of the Florida Department of Economic Opportunity. Acting Secretary Ivey serves as the head of the Florida Department of Economic Opportunity. Fla. Stat. § 20.60(2). The Florida Department of Economic Opportunity is authorized by statute to maintain the Official List of Special Districts, which includes all special districts in Florida. Fla. Stat. § 189.061(1)(a), (2); *see id.* § 189.012(1). The Secretary of the Florida Department of Economic Opportunity is appointed by the Governor, reports to the Governor, and serves at the pleasure of the Governor. Fla. Stat. § 20.60(2). She is sued in her official capacity.

23. Defendant Martin Garcia is the Chair of the Central Florida Tourism Oversight District board. The board is CFTOD's governing body, has "controlling authority over the district," and exercises the District's statutory powers. *See* CFTOD Charter § 4(1). Chair Garcia was appointed by the Governor. *Id.* He is sued in his official capacity.

24. Defendant Michael Sasso is a member of the Central Florida Tourism Oversight District board. Sasso was appointed by the Governor. He is sued in his official capacity.

25. Defendant Brian Aungst, Jr. is a member of the Central Florida Tourism Oversight District board. Aungst was appointed by the Governor. He is sued in his official capacity.

26. Defendant Ron Peri is a member of the Central Florida Tourism Oversight District board. Peri was appointed by the Governor. He is sued in his official capacity.

27. Defendant Bridget Ziegler is a member of the Central Florida Tourism Oversight District board. Ziegler was appointed by the Governor. She is sued in her official capacity.

28. Defendant John Classe is the District Administrator of the Central Florida Tourism Oversight District. The CFTOD board appoints the District Administrator and can remove him by vote at any time. *See* CFTOD Charter § 4(6)(b). The District Administrator is "in charge of the day-to-day operations of the district subject to the board of supervisor's direction and policy decisions." *Id.* He is sued in his official capacity.

JURISDICTION AND VENUE

29. This Court has subject-matter jurisdiction under 28 U.S.C. §§ 1331 and 1343 because this action arises under the United States Constitution and federal law.

30. This Court has authority to grant relief under the Declaratory Judgment Act, 28 U.S.C. §§ 2201, 2202, and 28 U.S.C. § 1343(a) and 42 U.S.C. § 1983.

31. In addition, this Court has authority to issue injunctive relief under the All Writs Act, 28 U.S.C. § 1651.

32. This Court's jurisdiction is properly exercised over Defendants in their official capacities, as Disney is seeking declaratory and injunctive relief only. *Ex parte Young*, 209 U.S. 123 (1908).

33. This Court has personal jurisdiction over Defendants, and venue is proper in this District pursuant to 28 U.S.C. § 1391, because a substantial part of the events giving rise to this claim occurred in this District.

34. There is an actual and justiciable controversy between Disney and Defendants, of sufficient immediacy and concreteness relating to the parties' legal rights and duties to warrant relief under 42 U.S.C. § 1983 and 28 U.S.C. §§ 2201 and 2202, because Senate Bill 4C, House Bill 9B, CFTOD's April 26, 2023 legislative findings and declaration that Disney's contracts are "void and

unenforceable" (the "Legislative Declaration"), and Senate Bill 1604 constitute a present and continuing infringement of Disney's constitutional rights.

FACTUAL BACKGROUND

A. THE REEDY CREEK IMPROVEMENT DISTRICT HAS BENEFITED FLORIDA AND ITS RESIDENTS FOR DECADES

35. In 1963, Walt Disney looked down on acres of undeveloped Central Florida land from an airplane seat and saw potential. Disney quickly acquired title or options for over 27,000 acres of land, comprising roughly 43 square miles in Central Florida.

36. In 1966, the State created the Reedy Creek Drainage District, which allowed Disney, the largest landowner, to begin the effort of draining and reclaiming land so that actual site construction would be possible. The following year, the Florida Legislature expanded the scope of the district's authority, establishing the Reedy Creek Improvement District. *See* Fla. Laws ch. 67-764 ("Reedy Creek Enabling Act").

37. In the Reedy Creek Enabling Act, the Legislature recognized that "the economic progress and well-being of the people of Florida depend in large measure upon the many visitors and new residents who come to Florida," Reedy Creek Enabling Act at 4, and, to that end, the Legislature granted RCID powers, functions, and authorities necessary to foster "a recreation-oriented community" that would "enable enterprises" to "undertake" "a broad and flexible program of

experimentation and development." *Id.* at 5. RCID was tasked with "provid[ing] for the reclamation, drainage and irrigation of land," "water and sewer systems and waste collection and disposal facilities," "public transportation and public utilities," and "streets, roads, [and] bridges." *Id.* The Legislature determined that the purposes of the act could not "be realized except through a special taxing district having the[se] powers." *Id.* at 6.

38. In 1968, the State of Florida challenged RCID's power to issue drainage bonds. *See State v. Reedy Creek Improvement Dist.*, 216 So. 2d 202 (Fla. 1968). The State argued that, because Disney was the largest landowner in RCID, the water control improvements funded by the bonds would impermissibly put public funds to a private purpose. *Id.* at 205. The Florida Supreme Court rejected the challenge, finding that RCID served a *public* purpose. In particular, it concluded that the purpose of RCID was "essentially and primarily directed toward encouraging and developing tourism and recreation for the benefit of citizens of the state and visitors to the state generally." *Id.* at 205-206.

39. The Florida Supreme Court also confirmed that the Legislature had properly established RCID, explaining that "the Legislature in the exercise of its plenary authority may create a special improvement district encompassing more than one county and possessing multi-purpose powers essential to the realization of a valid public purpose." *Id.* at 206. The Court further emphasized that while

RCID's powers over land use and economic development were broad, they were not "commensurate in scope with those characteristic of a local municipal government" and were not "a mere subterfuge to avoid the creation of a municipality." *Id.* at 206.

40. In the decades that followed, RCID has played a critical role in providing vital services for tourism in Central Florida. RCID enforces building codes, provides emergency services, and offers utilities—subject to the oversight of state and federal regulators. Under state law, special district board meetings are open to the public and districts provide reasonable notice of and produce minutes of each meeting; these records are open for public inspection. *See* Fla. Stat. § 286.011(1), (2). In a 2004 report, Florida's Office of Program Policy Analysis & Government Accountability concluded that RCID was meeting "the public purpose expressed in its special act[.]"[1]

41. Today, the area formerly governed by RCID (now governed by CFTOD) encompasses approximately 25,000 acres of land and covers portions of Orange and Osceola Counties. The District employs hundreds of employees responsible for stewarding the land consistent with environmental regulations and

[1] OFF. PROG. POL'Y ANALYSIS & GOV'T ACCOUNTABILITY, CENTRAL FLORIDA'S REEDY CREEK IMPROVEMENT DISTRICT HAS WIDE-RANGING AUTHORITY 9, Report No. 04-81 (Dec. 2004), https://oppaga.fl.gov/Documents/Reports/04-81.pdf.

public safety. The District has built 134 miles of roadways and 67 miles of waterways. It has managed 60,000 tons of waste. It recycles 30 tons of aluminum, paper, steel cans, cardboard, and plastic containers every year. It uses thousands of vendors, suppliers, and contractors to provide a high level of public services for visitors.

42. Disney is the primary landowner in the District and, as a result, is its largest taxpayer. For the 2022 fiscal year, Disney-owned land constituted 87.7% of the total taxable assessed value within the District.[2]

43. Like many other special districts in Florida, RCID board members were, until recently, elected on the basis of property ownership within the District. As RCID's largest landowner and taxpayer, Disney naturally had substantial input into RCID's acquisition of property, development of transportation facilities, operation of public utilities, and issuance of revenue bonds, among other things. Disney, since the beginning, was the primary contributor to the unprecedented success of RCID's development objectives.

B. OVER A MULTI-YEAR PROCESS, DISNEY AND THE DISTRICT COMPLETE THE COMPREHENSIVE PLAN 2032

44. Under Florida's Community Planning Act, a special improvement district is required to adopt a "comprehensive plan" that guides future growth and

[2] REEDY CREEK IMPROVEMENT DISTRICT, ANNUAL FINANCIAL REPORT 51 (Feb. 7, 2022), https://www.rcid.org/document/2021-rcid-annual-financial-report.

development. *See* Fla. Stat. §§ 163.3161(8), 163.3177. Comprehensive plans include elements addressing affordable housing, transportation, infrastructure, conservation, recreation and open space, intergovernmental coordination, and capital improvements. *See id.* § 163.3177(6). Florida law also requires that special districts review their comprehensive plan every seven years to determine whether amendments are necessary. *See id.* § 163.3191(1).

45. The current comprehensive plan is the RCID Comprehensive Plan 2032 ("Comprehensive Plan"). RCID and Disney began collaborating years ago, in 2018, to settle on the amendments captured in the Comprehensive Plan. Among other things, the Comprehensive Plan details maximum development limits, down to the square foot, through 2032 for hotels, office space, retail and restaurants, and theme parks.

46. On May 25, 2022, RCID held a public hearing on the Comprehensive Plan. At that hearing, RCID's Planning and Engineering team advised that the contemplated amendments would bring RCID's Comprehensive Plan up to 2032. After discussing questions from the board and soliciting public comments—there were none—the board unanimously approved the Comprehensive Plan.[3] The City

[3] Minutes of Meeting, Reedy Creek Improvement District Board of Supervisors Meeting (May 25, 2022), *available at* https://www.rcid.org/about/board-of-supervisors-2/ (last accessed May 8, 2023).

Councils of Bay Lake and Lake Buena Vista had each unanimously approved the Comprehensive Plan the day before.

47. Shortly thereafter, on June 2, 2022, RCID submitted the Comprehensive Plan to the State's Department of Economic Opportunity for review. By letter dated July 15, 2022, the Department confirmed that it had "reviewed the amendment in accordance with the state coordinated review process set forth in Section 163.3184(2) and (4), Florida Statutes" and had "determined that the adopted amendment meets the requirements of Chapter 163, Part II, F.S. for compliance."[4] The Department thereby determined that, among the many other legal requirements it satisfied, the Plan properly set forth "the principles, guidelines, standards, and strategies for the orderly and balanced future economic, social, physical, environmental, and fiscal development of the area that reflects community commitments to implement the plan and its elements." Fla. Stat. § 163.3177(1).

48. By statute, an "affected person" can file a challenge to a plan amendment. A petition challenging a comprehensive plan amendment must be filed within 30 days after the plan amendment is adopted. *See* Fla. Stat.

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[4] REEDY CREEK IMPROVEMENT DISTRICT, CITY OF BAY LAKE, & CITY OF LAKE BUENA VISTA, RCID COMPREHENSIVE PLAN 2032 (effective July 15, 2022), https://www.rcid.org/wp-content/uploads/2023/02/2032-RCID-Comprehensive-Plan.pdf (last accessed May 8, 2023).

§ 163.3184(5)(a).[5] No petition was filed, and the Comprehensive Plan became effective on July 15, 2022.

C. DISNEY PUBLICLY COMMENTS ON HOUSE BILL 1557

49. The Florida Legislature passed the Parental Rights in Education Act ("House Bill 1557") in March 2022.[6]

50. The public discussion before and after the bill's passage was robust not only in Florida, but across the country. Commentary came from all corners, including "leaders of global corporations" and "editorial boards of major newspapers."[7]

51. As a Florida corporation and taxpayer with tens of thousands of Florida-based employees, Disney took an interest in the bill. On March 9, the then-CEO of Disney's parent company, The Walt Disney Company, called Governor DeSantis personally to express the Company's concern.

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[5] *See also* FLORIDA DEPARTMENT OF ECONOMIC OPPORTUNITY, TIME FRAME AND PROCEDURES FOR A CITIZEN CHALLENGE TO A COMPREHENSIVE PLAN AMENDMENT, https://floridajobs.org/community-planning-and-development/programs/community-planning-table-of-contents/time-frame-and-procedures-for-a-citizen-challenge-to-a-comprehensive-plan-amendment.

[6] Committee Substitute for House Bill 1557 (2022), Fla. Laws ch. 2022-22 (amending Fla. Stat. § 1001.42).

[7] Matt Lavietes, *Here's What Florida's 'Don't Say Gay' Bill Would Do and What It Wouldn't Do*, NBC NEWS (Mar. 16, 2022), https://www.nbcnews.com/nbc-out/out-politics-and-policy/floridas-dont-say-gay-bill-actually-says-rcna19929.

52. Governor DeSantis recounts thinking that "it was a mistake for Disney to get involved" and telling Disney's then-CEO, "'You shouldn't get involved[;] it's not going to work out well for you.'"[8]

53. On March 10, Governor DeSantis's campaign sent an email accusing "Woke Disney" of "echoing Democrat propaganda."[9]

54. Walt Disney World issued the following statement shortly thereafter: "To ALL who come to this happy place, welcome. Disney Parks, Experiences and Products is committed to creating experiences that support family values for every family, and will not stand for discrimination in any form. We oppose any legislation that infringes on basic human rights, and stand in solidarity and support our LGBTQIA+ Cast, Crew, and Imagineers and fans who make their voices heard today and every day."[10]

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[8] Kimberly Leonard, *Florida Gov. Ron DeSantis Said He Warned Disney Not to Get Involved in Schools Debate: 'It's Not Going to Work Out Well for You,'* BUSINESS INSIDER (June 8, 2022), https://www.businessinsider.com/desantis-says-he-told-disney-to-stay-out-of-dont-say-gay-fight-2022-6.

[9] Cortney Drakeford, *'Woke Disney' Trends After Gov. Ron DeSantis Attacks Company for Freezing Campaign Donations*, INT'L BUS. TIMES (Mar. 12, 2022), https://www.ibtimes.com/woke-disney-trends-after-gov-ron-desantis-attacks-company-freezing-campaign-donations-3435110.

[10] Andrew Krietz, *Disney Releases Statement As DeSantis Prepares To Sign Bill Limiting Teachings About Sexual Orientation, Gender*, WTSP (Mar. 22, 2022), https://www.wtsp.com/article/news/politics/disney-florida-desantis-statement-bill/67-170f27d3-eee4-4fb1-ab70-01c73828834a.

55. Governor DeSantis signed House Bill 1557 into law on March 28. That day, The Walt Disney Company issued a statement expressing its views that the legislation "never should have been signed into law," that its "goal as a company is for this law to be repealed by the [L]egislature or struck down in the courts," and that The Walt Disney Company "remains committed to supporting the national and state organizations working to achieve that."[11]

56. On March 29, Governor DeSantis said that he thought The Walt Disney Company's March 28 statement had "crossed the line" and pledged "to make sure we're fighting back" in response to Disney's protected speech.[12]

57. Governor DeSantis's memoir attacked Disney's speech and petitioning activity for expressing the wrong viewpoint. "In promising to work to repeal the bill," he asserted, "the company was pledging a frontal assault on a duly enacted law of the State of Florida." As a consequence of its disfavored speech and petitioning, he declared, "[t]hings got worse for Disney."[13]

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[11] Press Release, The Walt Disney Company, Statement From The Walt Disney Company on Signing of Florida Legislation (Mar. 11, 2022), https://thewaltdisneycompany.com/statement-from-the-walt-disney-company-on-signing-of-florida-legislation/.

[12] David Kihara, *DeSantis Says Disney 'Crossed the Line' in Calling for 'Don't Say Gay' Repeal*, POLITICO (Mar. 29, 2022), https://www.politico.com/news/2022/03/29/desantis-disney-dont-say-gay-repeal-00021389.

[13] Ron DeSantis, THE COURAGE TO BE FREE, ch. 12 (2023).

58. The Governor promptly began his campaign of punishment.

D. GOVERNOR DESANTIS AND THE LEGISLATURE DISSOLVE THE REEDY CREEK IMPROVEMENT DISTRICT

59. On March 30, State Representative Spencer Roach disclosed for the first time that the Legislature was considering dissolving RCID and announced, "If Disney wants to embrace woke ideology, it seems fitting that they should be regulated by Orange County."[14] Governor DeSantis had been orchestrating the move behind the scenes. As he recounts it in his memoir, "I needed to be sure that the Legislature would be willing to tackle the potentially thorny issue involving the state's most powerful company. I asked the House Speaker, Chris Sprowls, if he would be willing to do it, and Chris was interested. 'OK, here's the deal,' I told him. 'We need to work on this in a very tight circle, and there can be no leaks. We need the element of surprise—nobody can see this coming.'"[15]

60. On March 31, Governor DeSantis quickly affirmed Representative Roach's statement, saying publicly, "[W]e're certainly not going to bend a knee to woke executives in California. That is not the way the state's going to be run."[16]

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[14] Fatma Khaled, *Disney at Risk of Losing Its Own Government in Florida*, NEWSWEEK (Apr. 1, 2022), https://www.newsweek.com/disney-risk-losing-its-own-government-florida-1693955.

[15] DeSantis, THE COURAGE TO BE FREE, *supra* note 13, ch. 12.

[16] Brandon Hogan, *Florida Gov. DeSantis Discusses Potential for Repeal of Disney's Reedy Creek Act*, CLICKORLANDO (Mar. 31, 2022), https://www.clickorlando.com/news/local/2022/03/31/florida-gov-desantis-

61. On April 19, Governor DeSantis suddenly called for the Legislature to expand a special session that had been scheduled to address redistricting. The new purpose of the session was to attack Disney by targeting just the handful of Florida's more than one thousand independent special districts that were created before the passage of the 1968 Florida Constitution, like RCID.[17]

62. Governor DeSantis conjured other rationales for the bill, including to "ensure that [independent special districts] are appropriately serving the public interest" and to "consider whether such independent special districts should be subject to the special law requirements of the Florida Constitution of 1968" that "prohibit[] special laws granting privileges to private corporations."

63. These rationales did not make sense. Only six independent special districts that were created before 1968 had not been reconstituted in the intervening years. Of those, RCID was the only district closely connected to a specific corporation. And, in Governor DeSantis's memoir, he admitted that he "found" that there was this "handful of other districts" that "also deserved scrutiny" only *after* his "staff worked with the legislative staff in the House" to target Disney.[18]

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discusses-potential-of-repeal-of-disneys-reedy-creek-act.

[17] *See* Proclamation, Governor Ron DeSantis (Apr. 19, 2022), https://www.flgov.com/wp-content/uploads/2022/04/Proclamation.pdf.

[18] DeSantis, THE COURAGE TO BE FREE, *supra* note 13, ch. 12.

64. When considered against the substance of the legislation, the pretext became especially transparent. The bill did nothing either to "ensure that [independent special districts] are appropriately serving the public interest" or "consider whether such independent special districts should be subject to the special law requirements of the Florida Constitution of 1968" that "prohibit[] special laws granting privileges to private corporations." Instead, under the bill, districts created before 1968 were preemptively scheduled for dissolution *before* the Legislature undertook any analysis to determine whether the districts were serving the public interest, and before any determination as to whether they were subject to the special law requirements of the 1968 Florida Constitution at all. Had the Legislature undertaken that analysis, it would necessarily have found that RCID served the public interest, as the Florida Supreme Court had already confirmed, *see Reedy Creek Improvement Dist.*, 216 So. 2d at 205-206, and further that RCID was not subject to the 1968 Florida Constitution's prohibition on special privileges granted to private corporations, *see id.* (rejecting as "untenable" the claim that the Reedy Creek Enabling Act's provisions were "oriented to serve primarily the benefit of that particular private enterprise").

65. On April 20, Governor DeSantis sent a fundraising email warning that "Disney and other woke corporations won't get away with peddling their

unchecked pressure campaigns any longer" and that he would "not allow a woke corporation based in California to run our state[.]"[19]

66. The campaign against Disney raced forward. The very same morning that Governor DeSantis issued his proclamation expanding the special session, identical bills were introduced in the Florida House and Senate providing for the dissolution of RCID. Florida House Bill 3C and Florida Senate Bill 4C each provided that "any independent special district established by a special act prior to the date of ratification of the Florida Constitution on November 5, 1968, and which was not reestablished, re-ratified, or otherwise reconstituted by a special act or general law after November 5, 1968, is dissolved effective June 1, 2023."[20]

67. House sponsor Representative Randy Fine immediately announced: "Disney is a guest in Florida. Today we remind them. @GovDeSantis just expanded the Special Session so I could file HB3C which eliminates Reedy Creek

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[19] A.G. Gancarski, *Ron DeSantis Dunks on Disney in Donor Pitch*, FLORIDA POLITICS (Apr. 20, 2022), https://floridapolitics.com/archives/517962-ron-desantis-dunks-on-disney-in-donor-pitch; *Florida's Governor Has Signed a Bill To Strip Disney World's Self-Government. Here's What That Means*, ASSOCIATED PRESS (Apr. 22, 2022), https://www.kcra.com/article/disney-world-self-government-explained/39786585.

[20] Senate Bill 6C, a bill removing an exemption for theme parks from a state law governing social media platforms, was introduced that same day and quickly passed in both chambers. Jennifer Kay, *DeSantis Set to Sign Bill Closing Disney Loophole in Tech Law*, BLOOMBERG LAW (Apr. 21, 2022), https://news.bloomberglaw.com/us-law-week/desantis-set-to-sign-bill-closing-disney-loophole-in-tech-law.

Improvement District, a 50 yr-old special statute that makes Disney to [sic] exempt from laws faced by regular Floridians."[21]

68. That same day, Representative Fine said to the Florida House State Affairs Committee: "You kick the hornet's nest, things come up. And I will say this: You got me on one thing, this bill does target one company. It targets The Walt Disney Company."[22]

69. Governor DeSantis's memoir describes the attack on Disney with pride: "Nobody saw it coming, and Disney did not have enough time to put its army of high-powered lobbyists to work to try to derail the bill. That the Legislature agreed to take it up would have been unthinkable just a few months before. Disney had clearly crossed a line in its support of indoctrinating very young schoolchildren in woke gender identity politics."[23]

70. The legislative process for Senate Bill 4C was highly unusual. When in the past the Florida Legislature had dissolved a special district, the bills enacting the dissolution typically specified the plan for governance and management of

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[21] Rep. Randy Fine (@VoteRandyFine), TWITTER (Apr. 19, 2022, 10:04 AM), https://twitter.com/VoteRandyFine/status/1516417533825454083.

[22] Hearing on HB 3C Before the Fla. H.R. State Affairs Comm., Special Session 2022C (Apr. 19, 2022) (remarks by Representative Randy Fine, sponsor of HB 3C, companion bill to SB 4C, starting at 1:13:00), https://www.myfloridahouse.gov/VideoPlayer.aspx?eventID=8085.

[23] DeSantis, THE COURAGE TO BE FREE, *supra* note 13, ch. 12.

district assets and obligations, including bond debt, after dissolution. *See, e.g.*, Community & Military Affairs Subcommittee Bill Analysis, House Bill 4191, Fla. Leg. (2011) (describing earlier legislation that dissolved South Lake Worth Inlet District, transferred all property, assets, and debt to Palm Beach County and clarified Palm Beach's rights and responsibilities as part of the transfer, and required Palm Beach to establish an advisory committee to advise County Commissioners on management of district's former territory); Atty. Gen'l Op. 97-68 (Fla. A.G. Sept. 25, 1997), 1997 WL 592,445 (referring to special acts Chapter 91-346 and Chapter 94-429, which collectively dissolved the Port Everglades Authority special district and transferred its operations and property to Broward County).

71. Senate Bill 4C, in stark contrast, described no plan for the disposition of RCID's assets, operations, or obligations. Nor did the bill address how RCID's roughly $1 billion in municipal bond debt would be satisfied.[24]

72. The legislative analysis accompanying the bill was cursory[25] and provided no estimate of the full economic impact of dissolving RCID. The

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[24] Danielle Moran, *Barclays Says to Buy Disney District Munis Amid DeSantis Feud*, BLOOMBERG (May 6, 2022), https://www.bloomberg. com/news/articles/2022-05-06/barclays-says-to-buy-disney-district-munis-amid-desantis-feud.

[25] Lori Rozsa et al., *Florida Legislature Passes Bill Repealing Disney Special Tax Status*, WASH. POST (Apr. 21, 2022), https://www.washingtonpost.com/nation/2022/04/21/florida-legislature-passes-bill-repealing-disneys-special-tax-status.

analysis identified no constitutional issues raised by the legislation. *See* Committee on Community Affairs Bill Analysis, Senate Bill 4C, Fla. Leg. (2022).

73. On April 20, the Senate passed Senate Bill 4C. The House followed suit, without legislative findings or a statement of purpose, the very next day, in a session without debate that lasted under five minutes.[26] Orange and Osceola Counties did not have time to conduct their own analyses.[27]

74. After the vote, Senator Joe Gruters said, "Disney is learning lessons and paying the political price of jumping out there on an issue."[28] The House bill's sponsor, Representative Fine, proudly confirmed that the Legislature had "looked at special districts" only because "Disney kicked the hornet's nest" by expressing a disfavored political viewpoint. "What changed," he said, was "bringing California values to Florida."[29] Christina Pushaw, then Governor DeSantis's press secretary,

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[26] Scott Powers, *Disney Government Dissolution Bill Approved Amid Chaos in House*, FLORIDA POLITICS (Apr. 21, 2022), https://floridapolitics. com/archives/518222-disney-government-dissolution-bill-approved-amid-chaos-in-house; Andrew Atterbury, *Florida Lawmakers Vote to Dismantle Disney's Special Privileges over 'Don't Say Gay'*, POLITICO (Apr. 21, 2022), https://www.politico.com/news/2022/04/21/florida-lawmakers-vote-to-dismantle-disneys-special-privileges-over-dont-say-gay-00026954.

[27] Rozsa et al., *supra* note 25.

[28] Jacob Ogles, *Joe Gruters, Despite Special Session Votes, Still Sees a Beautiful Tomorrow with Disney*, FLORIDA POLITICS (Apr. 22, 2022), https://floridapolitics.com/archives/518669-joe-gruters-despite-special-session-votes-still-sees-a-beautiful-tomorrow-with-disney.

[29] Sarah Whitten, *Florida Republicans Vote to Dissolve Disney's Special*

warned corporations that might consider expressing disfavored viewpoints, "Go woke, go broke."[30]

75. On April 22, Governor DeSantis signed both Senate Bill 4C and Senate Bill 6C. At the signing ceremony, he said, "For whatever reason, Disney got on that bandwagon. They demagogued the bill. They lied about it. … Do you know what my view is? I was very clear about saying 'You ain't influencing me. I'm standing strong right here.' … We signed the bill. And then, and incredibly, they say, 'We are going to work to repeal Parents' Rights in Florida.' And I'm just thinking to myself, 'You're a corporation based in Burbank, California, and you're going to marshal your economic might to attack the parents of my state?' We view that as a provocation and we are going to fight back against that."[31]

76. Because the legislation was hastily enacted with no analysis or plan for disposition of RCID's assets or obligations—let alone daily operations—markets, constituencies, and RCID employees were concerned.

District, Eliminating Privileges and Setting up a Legal Battle, CNBC (Apr. 21, 2022), https://www.cnbc.com/2022/04/21/florida-set-to-dissolve-disneys-reedy-creek-special-district.html.

[30] Christina Pushaw (@ChristinaPushaw), Twitter (Apr. 21, 2022, 5:31 PM), https://twitter.com/ChristinaPushaw/status/1517254737401458690; Rozsa et al., *supra* note 25.

[31] Governor Ron DeSantis, Remarks at Signing Ceremony for Senate Bill 4C (Apr. 22, 2022) (transcript available at https://www.rev.com/blog/transcripts/gov-desantis-holds-news-conference-in-south-florida-4-22-22-transcript).

77. The same day the bill was signed, credit-rating agency Fitch Ratings placed RCID's approximately $1 billion in outstanding bond debt on "rating watch negative" based on "the lack of clarity regarding the allocation" of RCID's assets and liabilities.[32]

78. Speculation spread that Orange and Osceola Counties would absorb RCID's expenses and debts. Orange County Tax Collector Scott Randolph predicted that Orange County would be saddled with RCID's obligations "the minute that Reedy Creek is dissolved," resulting in a property tax increase of 20-25%.[33] Senator Linda Stewart addressed this possibility: "Turning it over to Orange County and Osceola County would create the largest property tax increase in our history. We don't want that to happen. Our residents do not want this to happen … This has not been well-thought-out."[34] At the same press conference, Senator Randolph Bracy called the plan "hare-brained" and "irresponsible," while Senator Victor Torres criticized Governor DeSantis for "bragging about raising

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[32] Dara Kim, *Credit Agency Places 'Rating Watch Negative' On Disney Debt*, MIAMI HERALD (Apr. 23, 2022), https://www.miamiherald.com/news/politics-government/state-politics/article260684352.html.

[33] Eric Levenson & Steve Contorno, *Ron DeSantis Says Ending Disney's Self-Governing Status Will be a 'Process.' Here's What Might Happen Next*, CNN (Apr. 27, 2022), https://www.cnn.com/2022/04/27/us/reedy-creek-disney-whats-next/index.html.

[34] *Central Florida Leaders Say Dissolving Reedy Creek Irresponsible, Not Well-Thought-Out*, WESH (May 3, 2022), https://www.wesh.com/article/dissolution-reedy-creek-improvement-district/39875725#.

taxes on one of the largest private companies in the state and saying government has a right to punish companies for their private business decisions."[35]

79. On May 16, residents and taxpayers in Osceola County filed a lawsuit against Governor DeSantis, alleging that the dissolution of Reedy Creek would lead to $1 to $2 billion in increased taxes for residents of Central Florida. *See* Complaint, *Foronda v. DeSantis*, No. 2022-009114-CA-01 (Fla. Cir. Ct. May 16, 2022).

80. Despite the chaos, the legislation's biggest boosters doubled down on their support. The House sponsor, Representative Fine, criticized Disney for taking a position on House Bill 1557 and warned that the Company, and others like it, are "now learning in Florida, there's a cost to doing that."[36]

81. In a June 6 interview, Governor DeSantis recalled that he had warned Disney not to participate in the public debate: "I though[t] it was a mistake for Disney to get involved and I told them, 'You shouldn't get involved[;] it's not going to work out well for you.'"[37] Governor DeSantis said that he believed it was

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35 Senator Linda Stewart, *Press Conference on Dissolution of Reedy Creek Improvement District with Senator Stewart, Senator Bracy, and Senator Torres*, FACEBOOK (May 2, 2022), https://www.facebook.com/SenatorLindaStewart/videos/1379985162424883.

36 Zach Weissmueller & Danielle Thompson, *The Death of Walt Disney's Private Dream City?*, REASON (June 1, 2022), https://reason.com/video/2022/06/01/the-death-of-walt-disneys-private-dream-city/.

37 *See* Leonard, *supra* note 8.

his role "as a leader" to "make sure people understand that [Disney] do[es] not run the state of Florida," adding that, "We're not going to have our leadership subcontracted out to a corporation with close ties to the [Chinese Communist Party] and that's based in Burbank, California."[38]

82. During a September 15, 2022 speech, Governor DeSantis said of Senate Bill 4C: "We took action" after Disney made "the mistake" of opposing the legislation.[39]

83. For months, no plan for implementing Senate Bill 4C was released. As late as mid-September 2022, Governor DeSantis's press secretary told reporters, "We don't have an announcement to make at the moment [about RCID] but stay tuned."[40]

84. Absent any plan addressing the scheduled dissolution of RCID, Disney and other stakeholders were left to guess at how Governor DeSantis and the

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[38] Jeremiah Poff, *DeSantis Blasts Disney's 'Stupid Activism' In Defiant Defense of Florida Parental Rights Law*, WASH. EXAMINER (July 15, 2022), https://www.washingtonexaminer.com/restoring-america/community-family/desantis-blasts-disneys-stupid-activism-in-defiant-defense-of-florida-parental-rights-law.

[39] American Firebrand (@AmFirebrand), TWITTER (Sept. 15, 2022, 12:55 PM), https://twitter.com/FirebrandPAC/status/1570456289649508352 (remarks by Governor DeSantis at National Conservatism Conference).

[40] Forrest Saunders, *GOP Lawmakers Expect 'Solution' for Disney's Reedy Creek District Soon*, WPTV (Sept. 13, 2022), https://www.wptv.com/news/political/gop-lawmakers-expect-solution-for-disneys-reedy-creek-district-soon.

Legislature might address the fallout. Florida Division of Bond Finance Director J. Ben Watkins III speculated about "a successor district."[41] But as of September 2022, high-ranking legislator Representative Daniel Perez admitted that the "timeline" for reaching a "solution" for RCID was "still uncertain."[42]

85. The months-long failure to propose a plan for the dissolution of RCID threatened Disney's operations, investments, and development plans. It also underscored the irregular process by which Governor DeSantis and the Legislature had voted to abolish the District.

E. GOVERNOR DESANTIS AND THE LEGISLATURE RECONSTITUTE AND SEIZE CONTROL OF THE DISTRICT

86. In early October 2022, reports emerged that Governor DeSantis finally had developed a plan to seize control of Disney's governing body. The Director of the Florida Division of Bond Finance revealed that Governor DeSantis would install "state appointees" on RCID's board.[43] To accomplish this, Governor DeSantis would have the Legislature "create a successor agency" that would "function essentially unchanged" from the original RCID—except that the new

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41 Danielle Moran, *Florida's Bond Chief Sees Disney District Being Re-Established*, BLOOMBERG (July 22, 2022), https://www.bloomberg.com/news/articles/2022-07-22/florida-s-bond-chief-sees-disney-district-being-re-established.

42 Saunders, *supra* note 40.

43 Gene Maddaus, *After 'Don't Say Gay,' a Weakened Disney Hopes to Limit the Damage*, VARIETY (Oct. 5, 2022), https://variety.com/2022/film/news/disney-desantis-reedy-creek-dont-say-gay-1235392328.

district would operate under the Governor's thumb, "cementing a political win for the governor."[44]

87. Three months later, Governor DeSantis posted a notice to the Osceola County website indicating his "intent to seek legislation before the Florida Legislature" doing just that.[45]

88. In a statement after the notice was published, the Governor's Communications Director confirmed that the new district's board would be "state-controlled" and heralded: "The corporate kingdom has come to an end."[46]

89. On January 31, 2023, a spokesperson for the Governor's Office announced that the Governor expected a special session of the Legislature the following week "on Reedy Creek and other items."[47]

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44 *Id.*

45 *Florida Governor Ron DeSantis Reveals Plans for Reedy Creek Replacement*, DAPS MAGIC (Jan. 7, 2023), https://dapsmagic.com/2023/01/florida-governor-ron-desantis-reveals-plans-for-reedy-creek-replacement (last accessed May 8, 2023).

46 Richard Bilbao, *Breaking: 'State-Controlled Board' Envisioned to Replace Disney's Reedy Creek*, ORLANDO BUS. J. (Jan. 6, 2023), https://bizjournals.com/orlando/news/2023/01/06/breaking-disney-reedy-creek-desantis-florida.html.

47 Jeffrey Schweers, *Governor 'Anticipates' Special Session on Disney's Reedy Creek Next Week*, ORLANDO SENTINEL (Feb. 1, 2023), https://www.orlandosentinel.com/politics/os-ne-desantis-reedy-creek-special-session-20230201-pqtn2xz6wzf6bj5q6oz4s35u6y-story.html.

90. Right on cue, just days later, the Florida Legislature convened a special session to introduce House Bill 9B.

91. House Bill 9B was every bit the takeover that Governor DeSantis promised. Section 2 of the bill reenacted RCID's charter but made key changes to consolidate power in the Governor. Historically, the District had been governed by a board of supervisors that "exercise[d] the powers granted to the district."[48] Under RCID's charter, board members were chosen through an election in which all landowners in the District were allotted one vote per acre of land owned in the District.[49] This structure—common in special districts for economic development throughout Florida—was no secret and was in place when Florida's Supreme Court long ago confirmed that RCID served a public purpose. *See Reedy Creek Improvement Dist.*, 216 So. 2d at 205-206.

92. House Bill 9B replaced that landowner-election process with a board handpicked by the Governor, subject to confirmation by the Florida Senate.[50] Once selected, board members could serve for up to 12 years.[51] The bill excluded from board service any person who, in the last three years, had worked for any

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48 Reedy Creek Enabling Act § 4(1).

49 *Id.* § 4(5).

50 CFTOD Charter § 4(1).

51 *Id.*

organization that owns a "theme park or entertainment complex" with at least one million annual visitors.[52] It also excluded any person with a relative who had done the same.[53]

93. In one important respect, things remained unchanged: The bill left RCID's financial and contractual obligations intact. In particular, contracts that RCID entered before House Bill 9B's effective date would be unaffected, as the legislation made expressly clear. Specifically, all preexisting contracts, debts, bonds, and other liabilities "shall continue to be valid and binding on the Central Florida Tourism Oversight District in accordance with their respective terms, conditions, and covenants."[54] Underscoring the point, the bill added: "The provisions of this act shall be liberally construed in favor of avoiding any events of default or breach under outstanding bonds or other instruments of indebtedness of the district's existing and legally valid contracts."[55]

94. House Bill 9B prevented the District's dissolution, which had been set to occur on June 1, 2023 under Senate Bill 4C. It reaffirmed the District's

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52 *Id.* § 4(2) (citing Fla. Stat. § 509.013(9)).

53 *Id.*

54 *Id.* § 1; *see also* House Bill 9B § 1 ("The provisions of this act shall not affect existing contracts that the district entered into prior to the effective date of this act.").

55 House Bill 9B § 1.

continued existence under a new name, however: the Central Florida Tourism Oversight District.[56]

95. House Bill 9B, like Senate Bill 4C, was a law designed to target Disney and Disney alone. It shifted the power to select the District's board from the District's landowners, including its majority landowner, Disney, to the Governor—to enable him to punish Disney for its protected speech about House Bill 1557. In comments to reporters on February 8, 2023, Governor DeSantis said of House Bill 9B: "There's a new sheriff in town and that's just the way it's going to be."[57]

96. The Legislature passed House Bill 9B within days of its special-session introduction.[58]

97. During the Florida Senate's February 10 floor session, Senator Doug Broxson underscored what was plain from the start: House Bill 9B was bare retaliation for Disney's failure to be "apolitical."[59] Senator Broxson was explicit

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56 CFTOD Charter §1; House Bill 9B §7.

57 Julia Musto, *DeSantis vs. Disney: Florida Governor Declares 'There's a New Sheriff in Town'*, FOX BUSINESS (Feb. 8, 2023), https://www.foxbusiness.com/lifestyle/desantis-disney-florida-governor-new-sheriff-town.

58 Bill History of House Bill 9B (2023), *available at* https://www.flsenate.gov/Session/Bill/2023B/9B/?Tab=BillHistory (last accessed May 8, 2023).

59 Fla. Senate Floor Proceedings, Special Session 2023B (Feb. 10, 2023) (remarks by Senator Doug Broxson, starting at 1:05:00), https://www.flsenate.gov/Media/VideoPlayer?EventId=1_nty0d3lq-202302101200.

about the bill's retaliatory intent: "We joined with the Governor in saying it was Disney's decision to go from an apolitical, safe 25,000 acres, and try to be involved in public policy. … We're saying 'you have changed the terms of our agreement, therefore we will put some authority around what you do.' And I gladly join the Governor in doing that."[60]

98. On February 27, Governor DeSantis signed House Bill 9B into law. In a related news release, the Governor praised the legislation for ending the "corporate kingdom of Walt Disney World" and "placing the district into state receivership."[61]

99. The very next day, Governor DeSantis published his book titled *The Courage to Be Free: Florida's Blueprint for America's Revival*. To kick off the book's press tour, Governor DeSantis authored an opinion piece in The Wall Street Journal that explicitly connected House Bill 9B to Disney's speech about House Bill 1557. Criticizing what he called "left-wing activists working at [Disney's] headquarters in Burbank," Governor DeSantis focused on Disney's opposition to

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60 *Id.*

61 Press Release, Governor Ron DeSantis, *Governor Ron DeSantis Signs Legislation Ending the Corporate Kingdom of Walt Disney World* (Feb. 27, 2023), https://www.flgov.com/2023/02/27/governor-ron-desantis-signs-legislation-ending-the-corporate-kingdom-of-walt-disney-world; Attachment to Press Release, Governor Ron DeSantis, *Dissolving the Corporate Kingdom* (Feb. 2023), https://www.flgov.com/wp-content/uploads/2023/02/Dissolving-the-Corporate-Kingdom.pdf ("More on HB 9-B can be found here.").

Florida's House Bill 1557 and said: "When corporations try to use their economic power to advance a woke agenda, they become political, and not merely economic, actors. In such an environment, reflexively deferring to big business effectively surrenders the political battlefield to the militant left. … Leaders must stand up and fight back when big corporations make the mistake, as Disney did, of using their economic might to advance a political agenda. We are making Florida the state where the economy flourishes because we are the state where woke goes to die."[62]

100. Indeed, Governor DeSantis has reaffirmed, again and again, that the State campaign to punish Disney for its speech about House Bill 1557 has been a coordinated and deliberate one from the start. Disney's commentary on House Bill 1557 was, he claimed, a "declaration of war" and "a textbook example of when a corporation should stay out of politics."[63]

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62 Ron DeSantis, *Why I Stood Up to Disney: Old-fashioned Corporate Republicanism Won't Do in a World Where the Left Has Hijacked Big Business*, WALL ST. J. (Mar. 1, 2023), https://www.wsj.com/articles/why-i-stood-up-to-disney-florida-woke-corporatism-seaworld-universal-esg-parents-choice-education-defa2506.

63 DeSantis, THE COURAGE TO BE FREE, *supra* note 13, ch. 12.

F. AMID INCREASING RETALIATORY STATE ACTION, DISNEY AND RCID EXECUTE TWO LONG-TERM LAND USE CONTRACTS AFTER PUBLICIZED AND OPEN HEARINGS

101. Despite the State's escalating retaliation, Disney sought de-escalation, including through several attempts to spark a productive dialogue with the DeSantis Administration.

102. It was to no avail. The threatening political action and rhetoric continued—and escalated further.

103. So, amid great uncertainty, Disney and RCID sought to secure future development plans that had been mutually arranged. They executed two agreements: a Chapter 163 Development Agreement (the "Development Agreement") (*see* Exhibit A) and a Declaration of Restrictive Covenants (the "Restrictive Covenants") (*see* Exhibit B) (together, the "Contracts").

1. Development Contracts, Generally

104. Private developers face enormous risk. They invest heavily in long-term projects that depend, for their viability, on stable government oversight and regulation.

105. That is especially the case for Disney, and Disney's goals with the Contracts at issue in this case underscore the point: The Company seeks to invest

up to $17 billion in capital and create roughly 13,000 new jobs in the region over the next decade.[64]

106. Development and investment of this magnitude cannot effectively take place when it can be nullified or undermined at the whim of new political leadership. Thus, because a development project often extends throughout several local or state administrations with potentially differing regulatory objectives, developers commonly rely on contract law to secure their investments over time.

107. Florida understands this well. Decades ago, the Legislature specifically authorized local governments to enter into contracts with private developers through the Florida Local Government Development Agreement Act ("Development Agreement Act"). Fla. Stat. §§ 163.3220-163.3243.

108. In enacting the Development Agreement Act, the Legislature "f[ound] and declare[d]" that "[t]he lack of certainty in the approval of development can result in a waste of economic and land resources, discourage sound capital improvement planning and financing, escalate the cost of ... development, and discourage commitment to comprehensive planning." Fla. Stat. § 163.3220(2). The Legislature explained that its intent in enacting the Development Agreement

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64 *Disney CEO Bob Iger Announces 17 Billion Investment*, BLOG MICKEY (Apr. 3, 2023), https://blogmickey.com/2023/04/disney-ceo-bob-iger-announces-17-billion-investment-13000-additional-jobs-at-walt-disney-world-over-next-decade.

Act was also to "encourage a stronger commitment to comprehensive and capital facilities planning, ensure the provision of adequate public facilities for development, encourage the efficient use of resources, and reduce the economic cost of development." *Id.* § 163.3220(3). In the Legislature's own words, "This intent is effected by authorizing local governments to enter into development agreements with developers[.]" *Id.* § 163.3220(4).

109. A restrictive covenant is another type of contract that facilitates efficient, productive, and profitable long-term land use. Restrictive covenants are agreements between two parties by which one party agrees to refrain from using property in a particular manner, ultimately to the benefit of both parties. Florida enforces restrictive covenants in order to provide "the fullest liberty of contract and the widest latitude possible in disposition of one's property." *Hagan v. Sabal Palms, Inc.*, 186 So. 2d 302, 308 (Fla. Dist. Ct. App. 1966).

110. As any prudent developer would do—and as many others have done, with no controversy—Disney used these tools to secure future development plans which the DeSantis Administration had already found compliant with Florida law in the Comprehensive Plan. The Contracts followed public notices in the Orlando Sentinel—Orlando's primary newspaper with readership in the hundreds of thousands—and discussion at public hearings.

2. The District's Publicized And Open Hearings

111. On January 18, 2023, RCID issued its first public notice in the Orlando Sentinel: "NOTICE IS HEREBY GIVEN that the Reedy Creek Improvement District will hold the first of two public hearings," on January 25, 2023, "on the intent to consider a development agreement, pursuant to Chapter 163, Florida Statutes," and the publication continued with specifics about the contract terms.

112. In accordance with the Orlando Sentinel notice, RCID considered the Development Agreement at the January 25 public hearing. As reflected in the minutes of the January 25 meeting, attendees included representatives from WESH 2 News, the Orlando Sentinel, Channel 9 WFTV, Channel 6 WKMG, Telemundo, and the Orlando Business Journal.[65] The RCID District Administrator advised that "the Board is being asked to consider a proposed development agreement between the District and Walt Disney Parks and Resorts U.S., Inc. (Disney)."[66] He explained several key provisions of the Development Agreement, including that it would "[v]est[] development entitlements in Disney as the owner of the vast majority of the lands within the District and the master developer of the Walt

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65 Minutes of Meeting, at p. 1, Reedy Creek Improvement District Board of Supervisors Meeting (Jan. 25, 2023), *available at* https://www.rcid.org/about/board-of-supervisors-2/ (last accessed May 8, 2023).

66 *Id*. at p. 6.

Disney World resort."[67] The RCID board president asked if there were any public comments. There were none.[68]

113. After that discussion and opportunity for public comment, RCID gave notice that the matter would be on the agenda again for the next public meeting, set for February 8, 2023. Two days after the first public hearing, RCID published that second notice in the Orlando Sentinel: "NOTICE IS HEREBY GIVEN that the Reedy Creek Improvement District will hold the second and final of two public hearings," on February 8, 2023, "on the intent to consider a development agreement pursuant to Chapter 163, Florida Statutes," and again continuing with accompanying specifics about the contract terms.

114. In accordance with that Orlando Sentinel notice, RCID considered the matter for a second time at the February 8 public hearing. As reflected in the minutes, attendees again included representatives from several news outlets including WESH 2 News, Fox 35, the Orlando Sentinel, Channel 9 WFTV, Bloomberg, and the Orlando Business Journal.[69]

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67 *Id.* at p. 7.

68 *Id.*

69 Minutes of Meeting, at p. 1, Reedy Creek Improvement District Board of Supervisors Meeting (Feb. 8, 2023), *available at* https://www.rcid.org/about/board-of-supervisors-2/ (last accessed May 8, 2023).

115. The District Administrator advised that there had been no changes to the Development Agreement since its first reading at the previous meeting.[70] He added that this February 8 meeting was the second of two public hearings required to approve the Development Agreement.[71] The RCID board president asked if there were any public comments and there were none.[72] Upon a motion to approve the Development Agreement, and a second to the motion, the RCID board unanimously approved it.[73]

116. At the February 8 meeting, the District Administrator also requested board approval and authorization to sign a Declaration of Restrictive Covenants.[74] He explained that the Restrictive Covenants are "associated with the Chapter 163 Developer's Agreement."[75] He then described several provisions of the Restrictive Covenants.[76] The RCID board president asked if there were any public comments and, again, there were none.[77] Upon a motion to approve the Restrictive

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70 *Id*. at p. 2.

71 *Id.*

72 *Id.*

73 *Id.*

74 *Id.* at p. 4.

75 *Id.*

76 *Id.*

77 *Id.*

Covenants, and a second to the motion, the RCID board unanimously approved them.[78]

117. Disney and RCID executed the Contracts that same day (February 8), and then recorded them in official county records.

3. The Contract Terms

118. The Contracts are interrelated, and each serves to the benefit of both Disney and the District for long-term development planning.

119. Much has been mischaracterized about the intent and effect of the Contracts. The Contracts do not undermine the CFTOD board's ability to exercise its limited governing powers. Indeed, among other things, the CFTOD board maintains the ability to (i) impose ad valorem taxes, maintenance taxes, and utility taxes (including the power to enforce collection of taxes by tax liens and foreclosure); (ii) build, operate, and maintain roads; (iii) provide emergency services; (iv) exercise the power of eminent domain; (v) maintain and operate the extensive drainage and flood control system and other utilities; (vi) adopt, supplement and enforce codes regulating building safety, elevators, escalators and similar devices, the prevention of fire hazards, plumbing and electrical installations and the like; (vii) review and approve or disapprove building permit applications;

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78 *Id.*

and (viii) issue general obligation bonds, revenue bonds, utility service tax bonds, and bond anticipation notes.

120. Rather, the Contracts reflect, in significant part, confirmation of the Comprehensive Plan that had already been reviewed by RCID and the State in July 2022.

121. The Development Agreement precludes Disney from using its land except as authorized in the Development Agreement, which permits Disney to use its lands within the District up to a defined maximum development program. Down to the square foot, the maximum development program specifies how much mixed-use commercial space for offices and retail/restaurants Disney can build through 2032. The maximum development program also approves one additional major theme park and two additional minor theme parks for construction through 2032. Finally, the maximum development program approves 14,000 additional keys for hotels and resorts.

122. Thus, the maximum development program tracks the planning set forth in the Comprehensive Plan. All development rights and entitlements, as established by the maximum development program, are vested in Disney. The Development Agreement further provides that any proposed development utilizing the maximum development program must follow the development review and approval process defined in the District's land development regulations.

123. The Development Agreement recognizes that the maximum development program will require new or expanded facilities in public infrastructure systems and requires that the District shall fund, design, and construct those public facilities. Thus, with respect to any land owned by Disney that is needed for public facilities, Disney agrees to sell its land to the District (instead of the District having to go through condemnation proceedings) and agrees not to seek payment from the District in excess of the land's fair market value.

124. Finally, as the Development Agreement recognizes, Disney and the District previously collaborated in the procurement of federal and state level environmental permits entitling RCID land to certain unique and beneficial development rights. Specifically, Disney sought and received—primarily at Disney's expense—approvals governing the protection and relocation of threatened and endangered species and requisite mitigation for the same. Disney similarly pursued and received approval of a comprehensive and forward-looking federal dredge and fill entitlement framework, creating a site-specific wetland credit mitigation bank via the acquisition, restoration, and perpetual management of what is now known as Disney's Wilderness Preserve and Mira Lago—again at Disney's expense. Given all that, the Development Agreement confirms certain mitigation credits are vested in Disney and that Disney is solely entitled to use them.

125. For long-term stability, the Development Agreement has a duration of 30 years from its effective date and may be extended.

126. The Restrictive Covenants provide that the standards under which the District's properties exist as of the Restrictive Covenants' effective date shall be maintained. Under the Restrictive Covenants, the exterior design, appearance, and exterior aesthetic qualities of any improvements to any portion of the District's properties are subject to Disney's prior review and comment, which Disney cannot unreasonably withhold, condition, or delay.

127. In relation to the District's properties, the Restrictive Covenants provide that the District shall not use names or symbols associated with Disney without Disney's express prior written approval; use fanciful characters (such as Mickey Mouse) or other intellectual property in designs, symbols, or other representations created by Disney; sell or distribute merchandise, souvenirs, or other items referring to Disney Properties or other Disney properties or Disney logos or trademarks; or use, reproduce, sell, distribute, or display any work copyrighted by Disney.

G. GOVERNOR DESANTIS REPLACES ELECTED RCID BOARD MEMBERS WITH CFTOD POLITICAL APPOINTEES WHO EXECUTE THE RETRIBUTION CAMPAIGN AND DECLARE "VOID" DISNEY'S LAND USE CONTRACTS

128. On February 27, 2023, the date Governor DeSantis signed House Bill 9B into law and three weeks after the Contracts were executed following public

notice and hearing, Governor DeSantis announced the names of the five individuals he had selected to replace the elected members of the board.[79]

129. When Governor DeSantis addressed what he was "looking for with this board," he described, with a thinly veiled euphemism, staffing the board with people who would censor Disney's speech and discipline the Company.[80] As Governor DeSantis put it, referring to Disney, "When you lose your way, you've got to have people that are going to tell you the truth … So we hope they can get back on."[81]

130. Governor DeSantis also posited that the new board could stop Disney from "trying to inject woke ideology" into children.[82] As Governor DeSantis put

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79 Press Release, Governor Ron DeSantis, *Governor Ron DeSantis Appoints Five to the Central Florida Tourism Oversight District* (Feb. 27, 2023), https://www.flgov.com/2023/02/27/governor-ron-desantis-appoints-five-to-the-central-florida-tourism-oversight-district.

80 WKMG News 6, *DeSantis Holds News Conference at Reedy Creek Fire Station*, YOUTUBE (Feb. 27, 2023), https://www.youtube.com/live/1FJR-dumaFY?t=2531 (last accessed May 8, 2023).

81 Ewan Palmer, *Ron DeSantis Makes Ominous Warning About Disney's Future Creative Control*, NEWSWEEK (Feb. 28, 2023), https://www.newsweek.com/ron-desantis-disney-board-florida-reedy-creek-1784261.

82 Jonathan Chait, *DeSantis Promises Florida Will Control Disney's Content: Right-Wing Board to Clamp Down on "Woke Ideology" in Cartoons*, NEW YORK MAG. (Mar. 1, 2023), https://nymag.com/intelligencer/2023/03/desantis-promises-florida-will-control-disney-content.html.

it, "I think all of these board members very much would like to see the type of entertainment that all families can appreciate."[83]

131. The new members of the board sat for their first meeting on March 8, 2023.

132. At that meeting, one board member suggested that two cities comprising Disney's property, Bay Lake and Lake Buena Vista, should be dissolved, despite the fact that the CFTOD board has no authority or mandate to dissolve the cities. Another hinted at plans to make major changes but did not go into detail. The board also approved hiring the same legal counsel that had advised Governor DeSantis's office on House Bill 9B.

133. Following the meeting, Disney released the following statement, holding onto hope that, despite the board's origins and Governor DeSantis's directives, the board might be willing to forgo its mandate to punish Disney and focus instead on the economic welfare of the District: "'The Reedy Creek Improvement District created and maintained the highest standards for the infrastructure for the Walt Disney World Resort. We are hopeful the new Central Florida Tourism Oversight District will continue this excellent work and the new

83 *Id.*

board will share our commitment to helping the local economy continue to flourish and support the ongoing growth of the resort and Florida's tourism industry.'"[84]

134. Unfortunately, CFTOD has embraced the Governor's express mission to punish Disney for expressing disfavored viewpoints.

135. On March 29, 2023, CFTOD gathered for its second meeting. At that meeting, CFTOD members claimed that they had just discovered the Contracts (which had been publicized in the press, read out at board meetings, and recorded in county records almost two months earlier). The CFTOD's special counsel suggested that RCID should hire firms with a "deeper bench" going forward. The next CFTOD meeting was scheduled for April 19.[85]

136. On the evening of March 29, one board member denounced the "arrogance of @disney," warning that the Company has been "ignoring parents and allowing radicals to sexualize our children," and was "now ignoring Florida taxpayers by sneaking in a last minute sweetheart development agreement." Equating Disney's exercise of its rights under Florida law to enter long-term

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[84] Gabrielle Russon, *Report: New Disney Governing Board Looks at Hiring Special Counsel with Ties to Reedy Creek Law*, FLORIDA POLITICS (Mar. 8, 2023), https://floridapolitics.com/archives/593877-report-new-disney-governing-board-looks-at-hiring-special-counsel-with-ties-to-reedy-creek-law.

[85] Agenda, Central Florida Tourism Oversight District Board of Supervisors Meeting (April 19, 2023), *available at* https://www.rcid.org/about/board-of-supervisors-2/ (last accessed May 8, 2023).

development agreements with Disney's exercise of its rights to speak on public issues, the same board member declared: "Disney has once again overplayed their hand in Florida. We won't stand for this and we won't back down."[86]

137. A public narrative about these Contracts quickly formed around the idea that Governor DeSantis was "caught off guard" and "had the rug pulled from under him."[87]

138. Governor DeSantis's allies, including a state representative and another CFTOD board member, in turn accused Disney of "trying to pass an 11th-hour deal in the middle of the night,"[88] and "sneaking in" the Contracts.[89] Echoing their calls, Governor DeSantis himself subsequently claimed that the Contracts were "uncovered" and "last-minute."[90]

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[86] Bridget Ziegler (@BridgetAZiegler), TWITTER (Mar. 29, 2023, 9:36 PM), https://twitter.com/BridgetAZiegler/status/1641253049250336771 (last accessed May 8, 2023).

[87] Alex Hammer & Emily Goodin, *'You Ain't Seen Nothing Yet': Humiliated DeSantis Vows to Hit Back at Disney after It Exploited Obscure 'Royal Clause' Loophole to Strip His New Reedy Creek Board of Its Power*, DAILY MAIL (Mar. 31, 2023), https://www.dailymail.co.uk/news/article-11922083/DeSantis-vows-not-Disney-fight-company-uses-royal-loophole.html.

[88] Representative Fred Hawkins, Remarks at Governor's Press Conference (Apr. 17, 2023), https://thefloridachannel.org/videos/4-17-23-governors-press-conference (starting at 19:15).

[89] Ziegler, *supra* note 86.

[90] Letter from Governor Ron DeSantis to Chief Inspector General Melinda Miguel (Apr. 3, 2023); *see Florida Governor Ron DeSantis Orders Investigation of Disney Over Reedy Creek Agreement*, DAPS MAGIC (Apr. 3, 2023),

139. None of this was true. As explained, these Contracts followed public notice—in the Orlando Sentinel, no less—and public hearings. But, despite the facts, the political story was set, and the retaliation only got worse.

140. On April 3, Governor DeSantis lashed out at Disney by announcing the launch of a wide-ranging civil and criminal investigation. Ostensibly triggered by the State's belated discovery of the Contracts, Governor DeSantis directed his Chief Inspector General Melinda Miguel to probe "[a]ny financial gain or benefit derived by Walt Disney World as a result of RCID's actions and RCID's justifications for such actions," "[a]ll RCID board, employee, or agent communications related to RCID's actions, including those with Walt Disney World employees and agents," and several other topics. Governor DeSantis instructed Chief Inspector General Miguel to refer "[a]ny legal or ethical violations … to the appropriate authorities."[91]

141. Three days later, on April 6, Governor DeSantis stated at a public event that Disney had "tried to pull a fast one." He added, "They are not superior to the people of Florida … So come hell or high water we're going to make sure that policy of Florida carries the day. And so they can keep trying to do things.

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https://dapsmagic.com/2023/04/florida-governor-ron-desantis-orders-investigation-of-disney-over-reedy-creek-agreement/ (published copy of letter) (last accessed May 8, 2023).

91 *Id*.

But ultimately we're going to win on every single issue involving Disney I can tell you that. … That story's not over yet. Buckle up. There's going to be more coming down the pike."[92]

142. In the question-and-answer session that followed, Governor DeSantis said that Disney is "acting like somehow that they pulled one over on the state" and that, "now that Disney has reopened this issue, we're not just going to void the development agreement they tried to do, we're going to look at things like taxes on the hotels, we're going to look at things like tolls on the roads … We're going to look at things like developing some of the property that the district owns."[93]

143. On April 7, addressing the Contracts, Governor DeSantis stated at a press conference, "Now that this has been reopened, all options are on the table. We need to make sure that people understand, whether you're an individual or you're a corporation, you don't get to play by your own rules ... I think Disney has always viewed itself as being exempt from that constitutional process. Well, those days are over here in the state of Florida." Emphasizing his control over the

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92 Gary Fineout, *'Buckle Up': DeSantis Escalates Disney Dispute, Eyes Hotel Taxes and Road Tolls*, POLITICO (Apr. 6, 2023), https://www.politico.com/news/2023/04/06/desantis-disney-hotel-taxes-toll-rodes-00090959.

93 Steven Lemongello & Skyler Swisher, *DeSantis: I'll Kill Reedy Creek Deal, Consider Hotel Taxes, Tolls for Disney World*, ORLANDO SENTINEL (Apr. 7, 2023), https://www.orlandosentinel.com/politics/os-ne-desantis-disney-void-reedy-creek-deal-20230407-5edgygdxb5hytdzyxztwxovzwa-story.html.

Legislature, he continued, "There will be additional legislative action taken in Tallahassee that will nullify what they tried to do at the 11th hour and then potentially, you know, arm the board with the ability to make sure that this is run appropriately."[94]

144. On April 13, Governor DeSantis stated at a public event, "They're fighting us on this. The media's acting like Disney getting out from under. No, it's not going to happen. We'll have news on that next week. So stay tuned. There will be round two in terms of those fireworks." He added, "I don't care if Disney doesn't like it … they can take a hike."[95]

145. Governor DeSantis conveyed his total control over the CFTOD board. Speaking on an Orlando radio program on April 17, Governor DeSantis warned

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[94] Ron DeSantis (@GovRonDeSantis), TWITTER (Apr. 7, 2023, 11:49 AM), https://twitter.com/GovRonDeSantis/status/1644366912200265729 (remarks at press conference in Marion County, starting at 36:48) (last accessed May 8, 2023).

[95] *Governor DeSantis Delivers Keynote Speech at GOP Meeting of Butler County, Ohio*, YOUTUBE (Apr. 13, 2023), https://www.youtube.com/watch?v=ygZTdVKMvvM (remarks by Governor DeSantis, at 10:04 & 28:50); A.G. Gancarski, *Ron DeSantis Promises 'Round 2' in Fight with Disney*, FLORIDA POLITICS (Apr. 13, 2023), https://floridapolitics.com/archives/603259-ron-desantis-promises-round-2-in-fight-with-disney.

that the CFTOD board would be meeting a few days later to "make sure Disney is held accountable."[96]

146. On April 17, Governor DeSantis convened a press conference to discuss next steps in the campaign against Disney. The steps included legislation and the Legislative Declaration by CFTOD.

147. He described the legislation as a bill that would "make sure that people understand that you don't get to put your own company over the will of the people of Florida." Describing what his administration would do with land taken from Disney's control, he mused, "People are like: 'What should we do with this land?' People have said, maybe create a state park, maybe try to do more amusement parks, someone even said, like, maybe you need another state prison. Who knows? I just think that the possibilities are endless[.]"[97] Governor DeSantis

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[96] Steve Contorno, *DeSantis Threatens Retaliation over Disney's Attempt to Thwart State Takeover*, CNN (Apr. 17, 2023), https://www.cnn.com/2023/04/17/politics/desantis-disney-takeover-florida/index.html.

[97] Ron DeSantis (@GovRonDeSantis), Twitter (Apr. 17, 2023, 12:57 PM), https://twitter.com/GovRonDeSantis/status/1648007909333417985 ("Governor DeSantis Provides an Update on Florida's Response to Disney," remarks at 9:14) (last accessed May 8, 2023); Emma Colton, *DeSantis Fires Back at Disney as Company Tries to 'Usurp' State Oversight*, FOX NEWS (Apr. 17, 2023), https://www.foxnews.com/politics/desantis-fires-back-disney-company-tries-usurp-state-oversight.

warned, "I look forward to the additional actions that the state control board will implement in the upcoming days."[98]

148. Representative Carolina Amesty took the podium after Governor DeSantis concluded his remarks. She reiterated the connection between the threatened board actions and Disney's protected speech: "Let it be known, across this great nation that here, in the free state of Florida, it is 'We the People,' not 'woke' corporations."[99] Representative Amesty continued, "We all love Disney; however, you cannot indoctrinate our children. Instead, they have turned Disney into this corporate PR arm of a small group of extremists who want to indoctrinate our children with radical gender ideologies that have no basis in science, common sense, or basic human decency."[100] In conclusion, Representative Amesty warned, "As our great Governor has said, Florida is a place where woke goes to die."[101]

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98 Press Release, Governor Ron DeSantis, *Governor Ron DeSantis Announces Legislative Action to Rebuke Disney's Last-Ditch Attempt to Defy the Legislature and the State of Florida* (Apr. 17, 2023), https://www.flgov.com/2023/04/17/governor-ron-desantis-announces-legislative-action-to-rebuke-disneys-last-ditch-attempt-to-defy-the-legislature-and-the-state-of-florida.

99 Ron DeSantis (@GovRonDeSantis), TWITTER (Apr. 17, 2023, 12:57 PM), https://twitter.com/GovRonDeSantis/status/1648007909333417985 (remarks of Representative Carolina Amesty, at 21:42-21:51) (last accessed May 8, 2023).

100 *Id.* at 22:03-22:23.

101 *Id.* at 23:43-23:49.

149. At the conclusion of the press conference, Governor DeSantis stated, "Stay tuned. We've got more coming up."[102]

150. The Governor's office issued a press release later that day, announcing, "Disney's corporate kingdom is over," and that "the agreements will be nullified by new legislation that I intend to execute. … I look forward to the additional actions that the state control board will implement in the upcoming days."[103]

151. The CFTOD met for its third meeting on April 19.

152. At the meeting, CFTOD's outside counsel attacked Disney's exercise of development contract rights and proclaimed that Disney's "efforts are illegal, and they will not stand"—even though he acknowledged that it is "well established under Florida law that a development agreement and a restrictive covenant" are "contract[s]" and are "governed by the law of contract."[104] CFTOD's counsel also

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102 *Id*. (remarks of Governor DeSantis) at 33:27-33:32.

103 Press Release, Governor Ron DeSantis, *Governor Ron DeSantis Announces Legislative Action to Rebuke Disney's Last-Ditch Attempt to Defy the Legislature and the State of Florida* (Apr. 17, 2023), https://www.flgov.com/2023/04/17/governor-ron-desantis-announces-legislative-action-to-rebuke-disneys-last-ditch-attempt-to-defy-the-legislature-and-the-state-of-florida/.

104 Transcript of Record, Central Florida Tourism Oversight District Board of Supervisors Meeting (Apr. 19, 2023) at 63:10; 71:5-8.

admitted that Disney "did publish notice … in the newspaper" before entering into the Development Agreement.[105]

153. When the CFTOD chair asked CFTOD's counsel "what action he recommends that the board take," the board's special counsel recommended that the board move to direct counsel to prepare "a resolution" for consideration at the board's April 26 meeting that would (1) declare the Contracts void *ab initio*, (2) make findings of fact in support thereof, and (3) direct action as need to assert CFTOD's positions on these issues. A motion in support of this action passed with unanimous support.[106]

154. The same day, the board published the agenda for the April 26 meeting. The agenda included a single item under "New Business," labeled "Approval of legislative findings regarding and declare the Development Agreement and Declaration of Restrictive Covenants entered into by Reedy Creek Improvement District and Walt Disney Parks and Resorts U.S. void *ab initio* and direction to litigation counsel regarding same."[107]

155. On April 24, CFTOD published proposed "legislative findings" for its predetermined voiding of the Contracts. The purported findings assert a

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105 *Id.* at 67:25.

106 *Id.* at 117:4-15.

107 *Id.* at 117:16-21.

scattershot collection of alleged contract infirmities and then declare the Contracts to be "void and unenforceable."[108]

156. Going further, the legislative findings and declaration attack the Comprehensive Plan, even though the State, itself, found the plan in compliance with Florida law months ago. The legislative findings and declaration also target certain land development regulation amendments that were recently adopted. CFTOD gave no prior notice of its intent to void the Comprehensive Plan or the regulation amendments.

157. The purpose and effect of this exercise of power is the same as the legislation and executive activity that has been deployed for over a year—to punish Disney for expressing a certain view.

158. On April 26, just as CFTOD previewed it would do the week before, the CFTOD board unanimously approved the legislative findings and declaration, declaring that the Contracts were "void and unenforceable."

H. GOVERNOR DESANTIS AND THE LEGISLATURE VOID THE CONTRACTS BY STATUTE AND EXPAND THE RETRIBUTION CAMPAIGN

159. During the same April 17 press conference in which he previewed the CFTOD's Legislative Declaration, *see supra* ¶¶ 146-149, Governor DeSantis

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[108] Meeting Package, Central Florida Tourism Oversight District Board of Supervisors (April 26, 2023), *available at* https://www.rcid.org/about/board-of-supervisors-2/ (4-26-23-BOS-Package.pdf) (last accessed May 8, 2023).

declared that the State would act directly as well: he had worked with "both leaders of the House and Senate" on a "bill that will be put out in the Florida legislature that will make sure" that the Contracts "are revoked."[109]

160. Senator Blaise Ingoglia also spoke. He threatened, "I know this Governor, and I know this Governor well, so I have a couple words for Disney: 'You are not going to win this fight. This Governor will.'"[110]

161. The next day, Senator Ingoglia delivered Governor DeSantis's promised legislation—an amendment to Senate Bill 1604 that voided the Contracts.[111]

162. As emphasized by the statements of the Governor and his allies, the amendment was drafted to target the Contracts specifically—and only the Contracts. It states:

> An independent special district is precluded from complying with the terms of any development agreement, or any other agreement for which the development agreement serves in whole or part as consideration, which is executed within 3 months preceding the effective date of a law modifying the manner of selecting members of

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109 Ron DeSantis (@GovRonDeSantis), Twitter (Apr. 17, 2023, 12:57 PM), https://twitter.com/GovRonDeSantis/status/1648007909333417985 ("Governor DeSantis Provides an Update on Florida's Response to Disney," remarks at 6:26) (last accessed May 8, 2023).

110 *Id.* (remarks of Senator Blaise Ingoglia) at 25:00-25:10.

111 Bill History of Senate Bill 1604 (2023), *available at* https://www.flsenate.gov/Session/Bill/2023/1604 (last accessed May 8, 2023).

> the governing body of the independent special district from election to appointment or from appointment to election.[112]

163. Thus, under the legislation, the Contracts are immediately void and unenforceable, though CFTOD is ostensibly empowered to readopt them "within 4 months of taking office."[113] Underscoring the State's coordinated efforts, in its Legislative Declaration executed the following week, CFTOD stated: "[T]he Board has no desire to readopt or ratify [the Contracts]."[114]

164. Senator Ingoglia called the amendment to Senate Bill 1604 a "reversion" of the Contracts, which he said RCID and Disney "put in place at the last second."[115]

165. Representative Stan McClain introduced an identical amendment the same day, though the House bill was later tabled in favor of Senate Bill 1604.[116] In discussions about his amendment to House Bill 439, Representative McClain

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112 Senate Bill 1604, Fla. Laws ch. 2023-31 (adding subsection (7) to Fla. Stat. § 189.031).

113 *Id.*

114 Meeting Package, Central Florida Tourism Oversight District Board of Supervisors (Apr. 26, 2023), *available at* https://www.rcid.org/about/board-of-supervisors-2/ (4-26-23-BOS-Package.pdf) (last accessed May 8, 2023).

115 Jim Turner, *Bills to End Reedy Creek Agreement Approved, Move to Florida House and Senate*, ORLANDO WEEKLY (Apr. 19, 2023), https://www.orlandoweekly.com/news/bills-to-end-reedy-creek-agreement-approved-move-to-florida-house-and-senate-34014881.

116 Bill History of House Bill 439 (2023), *available at* https://www.flsenate.gov/Session/Bill/2023/439/?Tab=BillHistory (last accessed May 8, 2023).

remarked: "When problems arise, we fix them."[117]

166. During the Florida House's May 3, 2023 floor session, multiple House members explicitly tied Senate Bill 1604 to the Contracts. Representative Toby Overdorf stated, "[Disney] chose to break the law, and now we have to come back and re-write it one more time so that other special districts don't follow that bad example."[118] Likewise, Representative William Robinson, Jr., speaking in favor of the bill, stated: "Two of my most terrifying words are 'lame duck.' And that's really what we're dealing with, right here. A lame duck board that is saddling a new board with obligations. … This development agreement has saddled the new board with obligations that the old board in a lame duck session was doing."[119]

167. By May 4, both the Senate and the House had passed Senate Bill 1604. One day later, May 5, Governor DeSantis signed the bill into law.

168. Governor DeSantis and his allies have no apparent intent to moderate their retaliatory campaign any time soon. Again, at the same April 17 press conference, *see supra* ¶¶ 146-149, Governor DeSantis announced ongoing efforts

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117 John Kennedy, *Ron DeSantis Strikes Back at Disney: Republican-led Legislature Comes to Governor's Aid*, TALLAHASSEE DEMOCRAT (Apr. 19, 2023), https://www.tallahassee.com/story/news/politics/state/2023/04/19/desantis-disney-florida-lawmakers-join-fight-control/70130112007.

118 Fla. House Floor Session, May 3, 2023, at 2:11:40-2:11:52 (12:15 PM), *available at* https://www.myfloridahouse.gov/VideoPlayer.aspx?eventID=8955 (Debate on CS/CS/SB 1604) (last accessed May 8, 2023).

119 *Id*. at 2:12:20-2:13:22 (remarks by Representative W. Robinson).

to give the State new authority to override safety inspections at Walt Disney World, as well as to regulate Disney's monorail transportation systems. Previewing the monorail legislation, Governor DeSantis falsely accused Disney of "exempt[ing] the monorail from any safety standards or inspections."[120]

169. Like clockwork, one week later, Senator Nick DiCeglie introduced the monorail legislation as an amendment to a Senate transportation bill. *See* Senate Bill 1250 (2023), later substituted as House Bill 1305 (2023). In what has now become a familiar practice, the proposed amendment was precision-engineered to target Disney alone, just as Governor DeSantis intended and previewed—imposing state oversight over only those private monorail systems located "within an independent special district created by local act which have boundaries within two contiguous counties." *Id.*

170. Disney is the only company affected by House Bill 1305.

[120] Ron DeSantis (@GovRonDeSantis), TWITTER (Apr. 17, 2023, 12:57 PM), https://twitter.com/GovRonDeSantis/status/1648007909333417985 ("Governor DeSantis Provides an Update on Florida's Response to Disney," remarks at 8:12) (last accessed May 8, 2023).

171. Underscoring the point, Senator Geraldine Thompson warned that House Bill 1305 "reeks of retribution."[121]

172. On May 2, the Senate passed House Bill 1305. The House passed the bill as amended the next day.

173. On May 5, 2023—at a press conference commemorating the end of the Florida legislative session, and the day he signed Senate Bill 1604 into law—Governor DeSantis was asked about his "handling of Reedy Creek."[122] Without hesitation or prompt, Governor DeSantis admitted: "[T]his all started, of course, with our parents' rights bill."[123]

174. In a separate interview that same day, Governor DeSantis trumpeted the unequivocal intent and perceived success of his retribution campaign: "Since our skirmish last year, Disney has not been involved in any of those issues. They

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121 Gabrielle Russon, *Senate Supports State Inspections of Disney World's Monorail, with 2 Republican Defections*, FLORIDA POLITICS (May 2, 2023), https://floridapolitics.com/archives/608999-senate-supports-state-inspections-of-disney-worlds-monorail-with-2-republican-defections.

122 Ron DeSantis (@GovRonDeSantis), TWITTER (May 5, 2023, 11:22 AM), https://twitter.com/GovRonDeSantis/status/1654506916473888768 ("Florida's 2023 Legislative Session Ends," remarks at 34:45-38:58) (last accessed May 8, 2023).

123 *Id.*

have not made a peep. That, ultimately, is the most important, that Disney is not allowed to pervert the system to the detriment of Floridians."[124]

175. Having exhausted all other options, Disney is left with no choice but to bring this Complaint asking the Court to stop the State of Florida from weaponizing the power of government to punish private business.

FIRST CAUSE OF ACTION
CONTRACTS CLAUSE VIOLATION
(U.S. Const. art I, § 10, cl. 1, amend. XIV; 42 U.S.C. § 1983; Declaratory Judgment Act, 28 U.S.C. §§ 2201-2202)

176. Disney realleges and incorporates by reference paragraphs 1-175.

177. Disney brings this first cause of action against all Defendants.

178. CFTOD's and the State Legislature's abrogation of the Contracts violates Disney's rights under the U.S. Constitution, article I, section 10, clause 1, known as the "Contracts Clause." The Contracts Clause provides that "[n]o State shall ... pass any ... Law impairing the Obligation of Contracts."

179. The Contracts Clause prohibits local government entities from abrogating their own contracts with private entities. *See*, *e.g.*, *Vicksburg Waterworks Co. v. City of Vicksburg*, 185 U.S. 65 (1902); *City of Walla Walla v. Walla Walla Water Co.*, 172 U.S. 1 (1898); *City of Los Angeles v. Los Angeles City*

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[124] NEWSMAX, *DeSantis talks Trump, Tucker, Disney and Biden in NEWSMAX exclusive*, YOUTUBE (May 5, 2023), https://www.youtube.com/watch?v=2UXmOkfeSAc (Governor DeSantis interview with John Bachman, at 0:05-3:52) (last accessed May 8, 2023).

Water Co., 177 U.S. 558 (1900); *New Orleans Water-Works Co. v. Rivers*, 115 U.S. 674 (1885); *Murray v. City of Charleston*, 96 U.S. 432 (1877); *E & E Hauling, Inc. v. Forest Preserve Dist.*, 613 F.2d 675 (7th Cir. 1980); *Welch v. Brown*, 935 F. Supp. 2d 875 (E.D. Mich. 2013). The Contracts Clause likewise bars a state from enacting laws that impair or abrogate local government contracts. *See U.S. Trust Co. of N.Y. v. New Jersey*, 431 U.S. 1, 24 n.22 (1977); *Rorick v. Board of Comm'rs of Everglades Drainage Dist.*, 57 F.2d 1048, 1055 (N.D. Fla. 1932). A law that impairs a government entity's own contracts with a private actor is especially suspect and hence subject to heightened judicial scrutiny. *U.S. Trust Co.*, 431 U.S. at 25-26.

180. The rights protected by the Contracts Clause are familiar to Florida law. Indeed, the Florida Supreme Court has pronounced the "right to contract" to be "one of the *most sacrosanct rights* guaranteed by our fundamental law." *Chiles v. United Faculty of Fla.*, 615 So. 2d 671, 673 (Fla. 1993) (emphasis added).

181. The Legislative Declaration and Senate Bill 1604 violate that most sacrosanct right and thus deprive Disney of its rights under the Contracts Clause. By declaring the Contracts void, the Legislative Declaration and Senate Bill 1604 purport to rescind Disney's rights and protections under contracts and to relieve CFTOD of any obligation to comply with its obligations under the Contracts or to pay damages for any breaches.

182. The substantial—indeed, total—impairment of Disney's contract rights was not "necessary" to serve an "important" government interest, as required to survive Contracts Clause scrutiny. *U.S. Trust Co.*, 431 U.S. at 25-26. As alleged in this Complaint, the Contracts were abrogated as part of an explicit campaign of official government retaliation against Disney for expressing a viewpoint the Governor and Legislature disagreed with. That objective is the opposite of important—it is categorically impermissible.

183. Any other asserted reasons for abrogating the Contracts are pretextual. RCID was fully empowered to enter into the Contracts. Special districts commonly enter into contracts with developers, including special districts with governing structures defined by land ownership. And the law establishing CFTOD expressly provides that all preexisting RCID contracts remain fully enforceable. CFTOD Charter § 1.

184. Just as in other long-term development contracts in other special districts, the Contracts here involve land-use rights and obligations, not sovereign or police powers that special districts are legally barred from delegating. The Contracts establish Disney's rights concerning use of its own property and, as expressly authorized by RCID's charter, restrict CFTOD from using its own property for non-public purposes that interfere with Disney's development of its property. Reedy Creek Enabling Act § 9 (authorizing RCID to subject its land to

"encumbrance"). In exchange, the Contracts restrict Disney's use of its own property to specified development purposes and obligate Disney to convey its property at fair market value when needed for public purposes.

185. Neither CFTOD nor the Legislature has identified any legitimate reason or need to treat the Contracts differently from long-term development agreements entered into by developers in other special districts.

186. Even if the State could articulate an "important" interest uniquely implicated by the Contracts that is not implicated by other special district development contracts, it cannot show that complete abrogation of the Contracts is "necessary" to serve any such interest. Under the Contracts Clause, the government "is not free to impose a drastic impairment when an evident and more moderate course would serve its purpose equally well." *U.S. Trust Co.*, 431 U.S. at 30-31. An impairment of a contract thus is prohibited if "a less drastic modification would have permitted" the government to advance its purpose while allowing the contract to remain in place. *Id.* The State has not identified any important government interest justifying its abrogation at all, much less an important interest that cannot be satisfied by modifying some provision or provisions of the Contracts.

187. CFTOD's and the State Legislature's decision to abrogate the Contracts completely, rather than pursue modification of whatever provisions

CFTOD or the State Legislature claims to be unlawful, underscores their motivation to punish Disney for its political speech rather than to operate as a good-faith counterparty in the continued development of the District.

188. Disney is entitled to a declaration that abrogation of the Contracts violates Disney's rights under the Contracts Clause and that the Contracts remain in effect and enforceable. Disney is further entitled to an order enjoining Defendants from enforcing the Legislative Declaration and Senate Bill 1604.

SECOND CAUSE OF ACTION
TAKINGS CLAUSE VIOLATION
(U.S. Const. amend. V, amend. XIV; 42 U.S.C. § 1983; Declaratory Judgment Act, 28 U.S.C. §§ 2201-2202)

189. Disney realleges and incorporates by reference paragraphs 1-175.

190. Disney brings this second cause of action against all Defendants.

191. The Legislative Declaration and Senate Bill 1604 take Disney's property without providing just compensation, in violation of the Takings Clause of the Fifth Amendment to U.S. Constitution. The Takings Clause provides: "[N]or shall private property be taken for public use, without just compensation." U.S. Const. amend V.

192. "Contract rights are a form of property and as such may be taken for a public purpose provided that just compensation is paid." *U.S. Trust Co.*, 431 U.S. at 19 n.16; *see also Lynch v. United States*, 292 U.S. 571, 579 (1934); *Contributors to Pennsylvania Hospital v. Philadelphia*, 245 U.S. 20 (1917). Not all contract

rights necessarily qualify as "property" under the Takings Clause, and thus "the fact that legislation disregards or destroys existing contractual rights does not always transform the regulation into an illegal taking." *Connolly v. PBGC*, 475 U.S. 211, 224 (1986). But when a law overrides "substantive" contract rights in "specific" real property, the Clause's protections apply. *Louisville Joint Stock Land Bank v. Radford*, 295 U.S. 555, 590 (1935); *see Pennsylvania Coal Co. v. Mahon*, 260 U.S. 393 (1922) (regulation overriding contractual right to mine land invalid under Takings Clause).

193. The Contracts secure valuable substantive rights in specific property, *i.e.*, the parcels explicitly identified in the Contracts. The Development Agreement, for example, grants Disney various long-term rights in the use and development of its land, consistent with the Comprehensive Plan found compliant with Florida law by the DeSantis Administration. The Restrictive Covenants likewise protect Disney's rights to develop its land by limiting CFTOD's ability to use its adjacent lands in ways that damage or destroy Disney's development rights. *Cf. Stop the Beach Renourishment, Inc. v. Fla. Dep't of Env't Prot.*, 560 U.S. 702, 713 (2010) (Scalia, J., concurring) ("when the government uses its own property in such a way that it destroys private property, it has taken that property"). The Legislative Declaration and Senate Bill 1604 expressly deprive Disney of those valuable rights in private property without making any payment to Disney in

exchange for the deprivation. The Legislative Declaration and Senate Bill 1604 thus take Disney's property without just compensation.

194. Disney is entitled to a declaration that the taking of Disney property rights without payment of just compensation violates the Takings Clause and that the property rights set forth in the Contracts remain in effect and enforceable. Disney is further entitled to an order enjoining Defendants from enforcing the Legislative Declaration and Senate Bill 1604.

THIRD CAUSE OF ACTION
DUE PROCESS CLAUSE VIOLATION
(U.S. Const. amend. XIV; 42 U.S.C. § 1983;
Declaratory Judgment Act, 28 U.S.C. §§ 2201-2202)

195. Disney realleges and incorporates by reference paragraphs 1-175.

196. Disney brings this third cause of action against all Defendants.

197. The Legislative Declaration and Senate Bill 1604 abrogate the Contracts without any rational basis and for only impermissible reasons, in violation of the Due Process Clause of the Fourteenth Amendments to the U.S. Constitution. The Due Process Clause provides: "[N]o person shall be … deprived of life, liberty, or property, without due process of law[.]"

198. The Due Process Clause forbids any state or local entity from adopting any "arbitrary and irrational" legislative act affecting a person's state-created rights—including property interests. *Kentner v. City of Sanibel*, 750 F.3d 1274, 1279-1280 (11th Cir. 2014); *see Lewis v. Brown*, 409 F.3d 1271, 1273 (11th

Cir. 2005). In other words, "states must demonstrate that they are violating private interests only as necessary to promote state interests." *McKinney v. Pate*, 20 F.3d 1550, 1557 n.9 (11th Cir. 1994).

199. The State cannot make that showing here. As alleged in this Complaint, the Legislative Declaration purporting to abrogate the Contracts was not enacted for any legitimate state interest. Nor was Senate Bill 1604. They were instead enacted to further an official State campaign of retaliation against Disney for expressing a viewpoint that Governor DeSantis and his legislative allies disagree with.

200. Further, the State does not and cannot demonstrate that complete abrogation of the Contracts is reasonably necessary to advance any state interest that could be legitimate. The State cannot show that the Contracts are dissimilar in character to contracts between other developers and special districts to fix long-term development rights and obligations. Nor can it show that the Contracts contradict any aspect of Comprehensive Plan found compliant by the State. The State thus cannot identify a non-arbitrary, rational basis for singling out and voiding the Contracts.

201. Disney is entitled to a declaration that the arbitrary and irrational voiding of the Contracts violates the Due Process Clause and that the Contracts

remain in effect and enforceable. Disney is further entitled to an order enjoining Defendants from enforcing the Legislative Declaration and Senate Bill 1604.

FOURTH CAUSE OF ACTION
FIRST AMENDMENT VIOLATION
(U.S. Const. amend. I, amend. XIV; 42 U.S.C. § 1983;
Declaratory Judgment Act, 28 U.S.C. §§ 2201-2202)

202. Disney realleges and incorporates by reference paragraphs 1-175.

203. Disney brings this fourth cause of action against all Defendants.

204. Disney's public statements on House Bill 1557 are fully protected by the First Amendment, which applies with particular force to political speech. *See Citizens United v. Federal Election Commission*, 558 U.S. 310, 342 (2010). Speech such as Disney's, on public issues and petitions to the government, "occupies the core of the protection afforded by the First Amendment." *McIntyre v. Ohio Elections Comm'n*, 514 U.S. 334, 346 (1995); *see also Warren v. DeSantis*, __ F. Supp. 3d __, 2022 WL 6250952, at *4 (N.D. Fla. 2022) (First Amendment protects speech "intended to influence public opinion and, in turn, any proposed legislation").

205. CFTOD's retaliatory interference with the Contracts, via the Legislative Declaration and its predicates, has chilled and continues to chill Disney's protected speech. *Bennett v. Hendrix*, 423 F.3d 1247, 1254 (11th Cir. 2005) (discussing action that "would likely deter a person of ordinary firmness from the exercise of First Amendment rights."). So too has the State's retaliatory

interference through Senate Bill 1604. This unconstitutional chilling effect is particularly offensive here due to the clear retaliatory and punitive intent that has motivated CFTOD's and the State Legislature's actions, at the Governor's directive. *See Bailey v. Wheeler*, 843 F.3d 473, 486 (11th Cir. 2016) ("Our First Amendment demands that a law-enforcement officer may not use his powerful post to chill or punish speech he does not like.").

206. Disney has a significant interest in its own contracts, which have been directly targeted by the Legislative Declaration and Senate Bill 1604. Disney faces concrete, imminent, and ongoing injury as a result of the contractual impairment.

207. CFTOD's and the Legislature's actions were motivated by retaliatory intent. On April 17, Governor DeSantis warned that the CFTOD board would be meeting a few days later to "make sure Disney is held accountable." Later that day, Governor DeSantis announced, "I look forward to the additional actions that the state control board will implement in the upcoming days." He also said that he had worked with "both leaders of the House and Senate" on a "bill that will be put out in the Florida legislature that will make sure that" the Contracts "are revoked." Governor DeSantis has let no doubt be harbored as to the impetus for his punishment. He wrote in an article to promote his book, "When corporations try to use their economic power to advance a woke agenda, they become political, and not merely economic, actors. … Leaders must stand up and fight back when big

corporations make the mistake, as Disney did, of using their economic might to advance a political agenda."

208. There is no rational basis to invalidate the Contracts, and the purported justifications for doing so are pretextual.

209. Because the Legislative Declaration and Senate Bill 1604 retaliate against Disney for its protected speech, Disney is entitled to a declaratory judgment that the Legislative Declaration and Senate Bill 1604 are unconstitutional and an order enjoining Defendants from enforcing them.

FIFTH CAUSE OF ACTION
FIRST AMENDMENT VIOLATION
(U.S. Const. amend. I, amend. XIV; 42 U.S.C. § 1983;
Declaratory Judgment Act, 28 U.S.C. §§ 2201-2202)

210. Disney realleges and incorporates by reference paragraphs 1-175.

211. Disney brings this fifth cause of action against all Defendants.

212. As discussed, Disney's public statements on House Bill 1557 are fully protected by the First Amendment, which applies with particular force to political speech. *See McIntyre*, 514 U.S. at 346.

213. The retaliatory reconstitution of Disney's governing body's structure through the enactments of Senate Bill 4C and House Bill 9B have chilled and continue to chill Disney's protected speech. *See Bennett*, 423 F.3d at 1254. This unconstitutional chilling effect is particularly offensive due to the clear retaliatory

and punitive intent that motivated the Governor's and the Legislature's actions. *See Bailey*, 843 F.3d at 486.

214. Disney has a significant interest in its governing body's composition and structure, which has been directly targeted by the enactment of legislation providing for its complete revision. Disney faces concrete, imminent, and ongoing injury as a result of CFTOD's new powers and composition.

215. Senate Bill 4C and House Bill 9B were motivated by retaliatory intent. Governor DeSantis would not have promoted or signed, and the Legislature would not have enacted either bill, but for their desire to punish Disney for its speech on an important public issue. *See Warren*, 2022 WL 6250952, at *2 (crediting "sources of information about the Governor's motivation" for suspending a prosecutor, including a tweet from the Governor's press secretary and comments during the Governor's announcement of the suspension).

216. Governor DeSantis called on the Legislature to extend its special session for the express purpose of enacting Senate Bill 4C the very day after Disney made a statement about House Bill 1557. He repeatedly and publicly stated that he was "fight[ing] back" for Disney's criticism of House Bill 1557, including at the bill-signing ceremony. Key legislators publicly acknowledged that Senate Bill 4C targeted Disney.

217. The law's passage was highly irregular. The bill was added to a special session convened for other purposes even though there was no emergency that would justify such rushed treatment: RCID had existed for decades, and Senate Bill 4C did not propose dissolution until June 2023. The bill passed only three days after identical bills were simultaneously introduced in the House and Senate. There was no debate in the House. Stakeholders did not have time to conduct their own analyses. And no concrete plan to effectuate the dissolution of RCID, or address the ramifications of doing so, was proposed in the months following the legislation's hasty enactment. *See Vill. of Arlington Heights v. Metro. Hous. Dev. Corp.*, 429 U.S. 252, 267 (1977) ("Departures from the normal procedural sequence also might afford evidence that improper purposes are playing a role. Substantive departures too may be relevant, particularly if the factors usually considered important by the decisionmaker strongly favor a decision contrary to the one reached.").

218. The circumstances surrounding the passage of House Bill 9B reveal the same retaliatory targeting. Again, a special session was convened and the Legislature passed the bill within days of its introduction. During the Senate's floor session, Senator Doug Broxson confirmed that the bill was punishment for Disney failing to be "apolitical." Senator Broxson said, "We joined with the Governor in saying it was Disney's decision to go from an apolitical, safe 25,000

acres, and try to be involved in public policy. ... We're saying 'you have changed the terms of our agreement, therefore we will put some authority around what you do.'" Governor DeSantis, in a recent article, gave the following context for House Bill 9B: "When corporations try to use their economic power to advance a woke agenda, they become political, and not merely economic, actors … Leaders must stand up and fight back when big corporations make the mistake, as Disney did, of using their economic might to advance apolitical agenda."

219. There are no rational bases for either Senate Bill 4C or House Bill 9B, and the purported justifications for both are pretextual.

220. Because both pieces of legislation retaliate against Disney for its protected speech, Disney is entitled to a declaratory judgment that the laws are unconstitutional and an order enjoining Defendants from enforcing them.

PRAYER FOR RELIEF

Plaintiff respectfully requests that this Court grant the following relief:

A. Declare that the Legislative Declaration and Senate Bill 1604 are unlawful and unenforceable because they abrogate Disney's rights in violation of the Contracts Clause;

B. Declare that the Legislative Declaration and Senate Bill 1604 are an unlawful taking of Disney's property rights without payment of just compensation in violation of the Takings Clause;

C. Declare that the Legislative Declaration and Senate Bill 1604 are unlawful and unenforceable because they were an arbitrary and irrational voiding of the Development Agreement and Restrictive Covenants in violation of the Due Process Clause;

D. Declare that the Legislative Declaration and Senate Bill 1604 are unlawful and unenforceable because they were enacted in retaliation for Disney's speech in violation of the First Amendment;

E. Declare that the Contracts remain in effect and enforceable;

F. Declare that Senate Bill 4C and House Bill 9B are unlawful and unenforceable because they were enacted in retaliation for Disney's political speech in violation of the First Amendment;

G. Issue an order enjoining Defendants from enforcing the Legislative Declaration and Senate Bill 1604;

H. Issue an order enjoining Defendants from enforcing Senate Bill 4C and House Bill 9B;

I. Award Plaintiff its attorney's fees and costs; and

J. Grant such other relief as this Court may deem just and proper.

Dated: May 8, 2023

Respectfully submitted.

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CERTIFICATE OF SERVICE

I hereby certify that, on May 8, 2023, I electronically filed the foregoing with the Clerk of Court using the CM/ECF system. I further certify that I will send the foregoing document and the notice of electronic filing to the following: by U.S. Mail, return receipt requested, and email, to John Guard, Chief Deputy Attorney General, john.guard@myfloridalegal.com, James Percival, James.Percival@myfloridalegal.com, Henry Whitaker, Henry.Whitaker@myfloridalegal.com, and Daniel Bell, Daniel.Bell@myfloridalegal.com, Office of the Attorney General of the State of Florida, PL-01, Tallahassee, FL 32399-1050, by U.S. Mail, return receipt requested, and email, to Charles J. Cooper, ccooper@cooperkirk.com, Cooper & Kirk, PLLC, 1523 New Hampshire Ave., NW, Washington D.C., 20036, and by U.S. Mail, return receipt requested, to Eryka Washington-Perry, Central Florida Tourism Oversight District, 1900 Hotel Plaza Blvd., Lake Buena Vista, Florida, 32830.

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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF FLORIDA
TALLAHASSEE DIVISION

WALT DISNEY PARKS AND RESORTS U.S., INC.,

Plaintiff,

v. No. 4:23-cv-163-MW-MJF

RON DESANTIS, in his official capacity as Governor of Florida, et al.,

Defendants.
_____/

DEFENDANTS' MOTION TO DISQUALIFY
CHIEF JUDGE MARK E. WALKER

Defendants move to disqualify Chief Judge Mark E. Walker (the Court) under 28 U.S.C. § 455(a) because the Court's impartiality in this matter might reasonably be questioned. This case involves claims that Defendants retaliated against Walt Disney Parks and Resorts U.S., Inc. based on Disney's viewpoints. Yet two previous times, in two unrelated cases, the Court *sua sponte* offered "Disney" as an example of state retaliation. Those remarks—each derived from extrajudicial sources—were on the record, in open court, and could reasonably imply that the Court has prejudged the retaliation question here. Because that question is now before this Court, and because that question involves highly publicized matters of great interest to Florida's citizens, the Court should disqualify itself to prevent even the appearance of impropriety.

BACKGROUND

I. The Court's Prior Comments About Disney

A. *Link v. Corcoran*

In *Link v. Corcoran*, No. 4:21-cv-271-MW-MAF (N.D. Fla.), the plaintiffs moved for a preliminary injunction on the ground that the defendants—state education officials—would punish the plaintiffs for the results of their "intellectual freedom and viewpoint diversity" surveys. *Link*, DE75 at 4. The plaintiffs argued that "[g]overnment reprisal is not a speculative risk" because "Governor DeSantis and Commissioner Corcoran have practically promised retaliation against Plaintiffs' speech." *Id.* at 21.

At the preliminary-injunction hearing on April 1, 2022—amidst ongoing public speculation about the potential dissolution of Disney's hand-picked local government, the Reedy Creek Improvement District (RCID), DE25 at 19–20—this Court discussed justiciability and whether the plaintiffs had shown a reasonable fear of First Amendment retaliation. *Link*, DE91 at 15–24. Specifically, the Court questioned how the surveys alone posed a threat to the plaintiffs' speech, because the statute at issue did not specify any "punitive measures that will be taken" by the Legislature or any other government entity based on the survey results. *Id*. at 15–18. The Court then used the State's contemplated dissolution of Disney's special district as an example of retaliatory conduct:

THE COURT: . . . I don't understand how—it seems to me how you can say that threat, the chill, is reasonable when you've got to assume so many things. I mean, it requires you to assume the survey will show that liberal views are widespread on campus. You've got to assume the legislature will react by reducing their school funding and that the funding will directly harm those plaintiffs . . . aren't there too many inferential steps for me to make at this juncture to find the chill is reasonable?

MS. VELEZ: Your Honor, there's a lot to parse here. And the first that I want to draw the Court's attention back to is that we think that the inquiry and the asking is a harm in and of itself. That's under the *Baird* decision. But, of course, we're primarily attacking—

THE COURT: But in that case, though—again, I just can't let it go. In that case, though, isn't the reason why that chill would be reasonable is you knew who I am and you know what my responses are, so you can target me directly?

I mean, I've already ruled, and the Eleventh Circuit will do what it does, but, you know, in the UF professor case, the chill—they knew who they were targeting, and they could target individuals, and so there was—and had announced their intent to do so, per the head of the board of trustees. So, I mean, there was facts before the Court that would—didn't require you to make a—stack inferences, but there were facts before the Court from which such a reasonable fear could be adduced from the record, other than the assumption—well, let me ask you this.

What's in the record, for example—*is there anything in the record that says we are now going to take away Disney's special status because they're woke?* Is there anything in the record that says—that you put in the record that says we are going to slash the funding? We did, in fact, take away millions of dollars from school boards because they had the audacity to require their students to wear masks during a pandemic.

What sort of—and I'm not suggesting that would be determinative in this case, but is that even in the record to say, Well, Judge, here's what we've got in the record that shows these fears are well founded? Because, you know, Judge, if somebody says, I'm going to hit you with a baseball bat, take them at their word; they're going to hit you with a

> baseball bat. They announced it, and . . . they've, in fact, done it in the past because here are the three people that just got hit with the baseball bat.
>
> So what do we have in the record that would support such a finding?
>
> MS. VELEZ: Well, Your Honor, I mean, of course, we think that we should take defendants at their word and everyone at their word. But, again, the larger point—
>
> THE COURT: . . . What's in the record . . . that shows these very people have taken putative measures [or punitive measures][1] against those they've described as woke in other contexts?

Id. at 21–24 (emphasis added).

The Court thus contrasted the claims in *Link* (where the alleged retaliation was too speculative) with the State's "tak[ing] away Disney's special status because they're woke" (an example where retaliation supposedly was *not* speculative). The hearing at which the Court drew that comparison came a few days after legislators began publicly calling for the dissolution of Reedy Creek,[2] and just a day after the

[1] Although the transcript records the Court as saying "putative measures," this appears to be a minor transcription error. The phrase "punitive measures" fits the context better, and the Court used the phrase "punitive measures" just minutes earlier during the same discussion. *Link*, DE91 at 16.

[2] Spencer Roach, (@SpencerRoachFL), Twitter (Mar. 30, 2022, 6:46 AM), https://twitter.com/SpencerRoachFL/status/1509119958369902595.

Governor publicly refuted the idea that dissolving RCID would be "retaliatory."[3] Those state-official remarks about RCID were widely reported in the news cycles surrounding the *Link* preliminary-injunction hearing, as were many similar statements.[4] And indeed, just a few weeks later, the State enacted Senate Bill 4C, which dissolved RCID and five other special districts, effective June 1, 2023, unless the Legislature took later action. *See* Ch. 2022-266, § 2, Laws of Fla.[5]

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[3] *3/31/22 Governor's Press Conference on First Responder Bonuses*, at 15:05–17:41, The Florida Channel (Mar. 31, 2022), https://thefloridachannel.org/videos/3-31-22-governors-press-conference-on-first-responder-bonuses.

[4] Rob Wile, *Magic no more? DeSantis questions Disney's special operating city in Florida*, NBC News (Apr. 2, 2022), https://www.nbcnews.com/business/consumer/reedy-creek-disney-world-special-district-history-desantis-rcna22551; Andrew Mark Miller, *DeSantis broaches repeal of Disney World's special self-governing status in Florida*, Fox News (Mar. 31, 2022), https://www.foxnews.com/politics/desantis-on-disney-i-dont-support-special-privileges-in-law-because-a-company-is-powerful; Renzo Downey, *Gov. DeSantis backs ending Disney's 'special privileges' as lawmakers threaten crackdown*, Florida Politics (Apr. 1, 2022), https://floridapolitics.com/archives/513011-gov-desantis-backs-ending-special-privileges-as-lawmakers-explore-disney-crackdown; Skyler Swisher, *DeSantis calls for end to Disney's 'special privileges' in Florida*, Orlando Sentinel (Apr. 1, 2022), https://www.orlandosentinel.com/2022/04/01/desantis-calls-for-end-to-disneys-special-privileges-in-florida; Ariel Zilber, *DeSantis may revoke Disney's 'self-governing' status over 'Don't Say Gay' feud*, New York Post (Apr. 1, 2022), https://nypost.com/2022/04/01/desantis-may-yank-disneys-self-governing-status-in-dont-say-gay-feud.

[5] *See also* Bill Analysis and Fiscal Impact Statement, Comm. on Cmty. Affairs, The Florida Senate (Apr. 19, 2022), https://www.flsenate.gov/Session/Bill/2022C/4C/Analyses/2022s00004C.pre.ca.PDF (listing the six special districts affected).

B. *Falls v. DeSantis*

On the same day that SB 4C became law, the plaintiffs in *Falls v. DeSantis*, No. 4:22-cv-166-MW-MJF (N.D. Fla.), similarly moved for a preliminary injunction based, in part, on the argument that the state-level defendants would take enforcement action against the plaintiffs' schools if the plaintiffs expressed opinions that violated the Individual Freedom Act,[6] thus chilling their speech. *See Falls*, DE4 at 49 ("[M]ost teachers and employers will choose to err on the side of caution and either avoid these topics altogether or espouse ideas with which Florida's conservative politicians agree, rather than risk discipline, loss of funding, or a lawsuit.").

At the preliminary-injunction hearing on June 21, 2022, this Court discussed the potential chilling effect of the State's enforcement action. *See Falls*, DE58 at 73–77. The Court summarized the plaintiffs' theory that their "speech [wa]s chilled [because the defendants] can, under existing regs, cut funding, and if your school is going to lose funding, then it would certainly create a chilling effect on a professor who doesn't want to be the source or cause of his school losing revenue." *Id*. at 75. The Court then brought up the example of school districts losing funding for imposing "mask mandates" during the pandemic as a reason why the risk of reduced funding for violating the IFA would not be "fanciful or farfetched." *Id*. at 76.

Turning to the defendants' counsel, the Court continued:

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[6] Ch. 2022-72, § 2–3, Laws of Fla. (IFA).

> THE COURT: Does it make any difference that in—just in recent history when schools or entities or organizations have not complied with what is demanded by Tallahassee that funding has been cut, for example, the face mask? Does that make it any less speculative and less conjectural?
>
> MR. COOPER: Your Honor, I don't think so because we certainly concede that there is the possibility of that form of enforcement against the institutions, and that is, as you say, a recent example of that authority being exercised by the—I guess here, the Board of Governors.
>
> THE COURT: *And then Disney is going to lose its status because—arguably, because they made a statement that run afoul—ran afoul of state policy of the controlling party*.
>
> At what point do you stack so many examples where *punitive actions* are taken if you don't do what you are told that suddenly it no longer becomes conjectural and you pass that threshold so you can establish standing? It's no longer fanciful or conjectural.

Id. at 78–79 (emphasis added).

In other words, the Court cited "Disney . . . los[ing] its status" as among a pattern of "punitive actions" suggesting that other, future retaliation might not be speculative. That was just two months after the passage of SB 4C. *Id.; see* Ch. 2022-266, § 2.

II. Disney's Present Lawsuit

The Legislature ultimately did not allow SB 4C to dissolve RCID. It instead passed a new special law reestablishing the district under a new name—the Central Florida Tourism Oversight District (CFTOD)—and a significantly revised charter. *See* Ch. 2023-5, Laws of Fla. (HB 9B). The Governor signed HB 9B on February 27, 2023 and appointed new members to CFTOD's Board of Supervisors.

Disney then sued the Governor, the Secretary of the Department of Economic Opportunity, CFTOD's Board, and CFTOD's Administrator in this Court. *See* DE25. Disney seeks, among other relief, to invalidate and declare unconstitutional SB 4C and HB 9B because they were purportedly "motivated by retaliatory intent." *See id.* ¶ 215. According to Disney, "both pieces of legislation retaliate against Disney for its protected speech, [and so] Disney is entitled to a declaratory judgment that the laws are unconstitutional and an order enjoining Defendants from enforcing them." *Id*. ¶ 220. Many of the allegations feature quotes from elected officials who described Disney as being a "woke" corporation or having a "woke" ideology or viewpoint; indeed, the word "woke" appears more than a dozen times in the amended complaint. *See, e.g., id*. ¶¶ 53, 59, 60, 65, 69, 74, 99, 130, 148, 207, 218.

Days before Disney filed suit, this Court in a written order expressed (in the *Link* case) its views about political rhetoric directed at "woke" ideology, calling "woke" the "boogeyman of the day." *Link*, DE287 at 3.

LEGAL STANDARD FOR DISQUALIFICATION

Under 28 U.S.C. § 455(a), a federal judge "shall disqualify himself in any proceeding in which his impartiality might reasonably be questioned." "[T]he standard is whether an objective, fully informed lay observer would entertain significant doubt about the judge's impartiality." *Christo v. Padgett*, 223 F.3d 1324, 1333 (11th Cir. 2000).

The touchstone for recusal under Section 455(a) is "not the reality of bias or prejudice but its appearance." *Liteky v. United States*, 510 U.S. 540, 548 (1994). "The very purpose of § 455(a) is to promote confidence in the judiciary by avoiding even the appearance of impropriety whenever possible." *United States v. Patti*, 337 F.3d 1317, 1321 (11th Cir. 2003) (quoting *Liljeberg v. Health Servs. Acquisition Corp.*, 486 U.S. 847, 865 (1988)). Thus, "any doubts must be resolved in favor of recusal." *Id.*; *see also Parker v. Connors Steel Co.*, 855 F.2d 1510, 1524 (11th Cir. 1988) ("It has been stated on numerous occasions that when a judge harbors any doubts concerning whether his disqualification is required he should resolve the doubt in favor of disqualification.").

ARGUMENT

The Court's unprompted suggestion, on two separate occasions, that the State punished Disney by eliminating its "special status" gives an appearance of partiality that would lead a reasonable observer to question whether the Court is predisposed to ruling that the State retaliated against Disney. In both *Link* and *Falls*, this Court cited, on the record, various examples of purportedly retaliatory acts committed by the State "in other contexts," and both times the Court referred to the loss of Disney's unique "status" as a prime example. *E.g.*, *Link*, DE91 at 21–24; *Falls*, DE58 at 78–79. Both times, the Court even associated the State's Disney-related actions with potential First Amendment protected activity—being "woke" (*Link*) and making "a

statement that . . . ran afoul of state policy of the controlling party" (*Falls*). The Court's comments thus could reasonably be understood to reflect that the Court has prejudged Disney's retaliation theory here, and therefore create "significant doubt[s] about the [Court's] impartiality" in this important matter. *Christo*, 223 F.3d at 1333.

The Court's comments seemingly reflect its opinion on whether the State punished Disney's speech by revoking Disney's "special status." That the Court made such statements gives the impression, at a minimum, that it has "an uncommon interest and degree of personal involvement in the subject matter" such that "a reasonable person would harbor a justified doubt as to [the Court's] impartiality." *United States v. Cooley*, 1 F.3d 985, 995 (10th Cir. 1993); *see also Parker*, 855 F.2d at 1524. And indeed, given the "rarity of [these kinds of] public statements, and the ease with which they may be avoided," it is even "more likely that a reasonable person will interpret such statements as evidence of bias." *In re Boston's Children First*, 244 F.3d 164, 170 (1st Cir. 2001).

There is no mistaking the import of the Court's statements. In *Link*, the Court asked counsel point blank whether she had evidence that the Legislature had "taken putative [or punitive] measures against those they've described as woke in other contexts," like anything "say[ing] we are now going to take away Disney's special status because they're woke." *Link*, DE91 at 23–24. And in *Falls*, the Court, in pon-

dering whether the State had taken "so many . . . punitive actions" that it was reasonable to believe that the State would soon take another, stated that "Disney is going to lose its status because—arguably, because they made a statement that run afoul—ran afoul of state policy of the controlling party." *Falls*, DE58 at 78. The Court even offered that Disney could be among the "many examples where punitive actions are taken if you don't do what you are told." *Id*. Whether Defendants took punitive action against Disney based on speech is a principal issue here.

True, the Court did qualify its statement in *Falls* with the term "arguably," but that does little to quell a reasonable perception that the Court may have prejudged Disney's retaliation theory. *See Franklin v. McCaughtry*, 398 F.3d 955, 961 (7th Cir. 2005). In *Franklin*, for example, a trial judge had referred to Franklin—a defendant alleged of committing additional crimes while released on bail—as "an example" for why a different defendant should not be released on bail. *Id.* On habeas review, the Seventh Circuit held that the trial judge appeared "actually biased" given that he had cited "Franklin as an example" of an "indigent prisoner[]" who had committed more crimes while on bail, even though Franklin had not yet been adjudged guilty of those additional crimes. *Id.* at 961–962. Nor was the Seventh Circuit swayed that the trial judge had attached the qualifying term "alleged" to Franklin's crimes:

> In context, despite the judge's use of the magic word "alleged" in the memorandum, the inference is irresistible that the judge was pointing

> to Franklin as the latest such incorrigible criminal, even though Franklin's trial had not yet taken place. This is powerful circumstantial evidence that [the judge] had pre-judged Franklin's case.

Id. at 961.

The same inference of bias and prejudgment is "irresistible" here. As in *Franklin*, this Court in *Falls* cited the State's treatment of Disney as an example of retaliatory motive. And as in *Franklin*, it does not matter that the Court used the magic word "arguably" to qualify its suggestion that "Disney is going to lose its status because . . . they made a statement" that "ran afoul of state policy of the controlling party." *Falls*, DE58 at 78; *Franklin*, 398 F.3d at 961.[7]

Simply put, when a matter garners substantial "public attention," "even ambiguous comments may create the appearance of impropriety that § 455(a) is designed to address." *In re Boston's Children First*, 244 F.3d at 170. After all, concerns about the "appearance of partiality . . . stem[] from the real possibility that a judge's statements may be misinterpreted *because of* the[ir] ambiguity." *Id.* (emphasis

[7] If the Court's courtroom commentary leaves any question as to the propriety of disqualification, the Court's characterization of "woke" as the "boogeyman of the day" answers it. The Court's "boogeyman" statement appeared not in a spontaneous bench statement, but rather in the Court's written final order of dismissal in the *Link* case, published days before this lawsuit was filed. *Link*, DE287 at 3. Throughout its amended complaint, Disney highlights remarks by the Governor and others about Disney as "woke" and cites those remarks as evidence to support its unlawful retaliation claim. The Court's reference to the woke "boogeyman" in *Link* enhances the reasonable impression that the Court agrees with Disney's characterizations.

added). The Court's comments, at the very least, remain "sufficiently open to misinterpretation" to "create [an] appearance of partiality." *Id*.

Finally, disqualification is especially appropriate here because the Court's comments "stem from extrajudicial sources" and were "focused against a party [in] the proceeding." *Hamm v. Members of Bd. of Regents*, 708 F.2d 647, 651 (11th Cir. 1983); *see also Liteky*, 510 U.S. at 551 (parties need not establish "pervasive bias" where a judge's comments about a party are rooted in extrajudicial sources). None of the parties in *Link* or *Falls* had mentioned the State's relationship with "Disney" at either hearing in which this Court *sua sponte* offered them as examples of state retaliation. We have found no mention by any of the parties of these subjects in any of their pleadings. Thus, the Court's understanding of what was happening to Disney (losing its "status")—as well as the Court's suggestion of Defendants' motives ("because they're woke"; "because they made a statement that . . . ran afoul of state policy of the controlling party")—must have originated from an extrajudicial source. In fact, in *Link*, the Court stated—seconds after its suggestive comments about Disney—that some of its commentary from the bench may stem from "what I know because I read the local newspaper." *Link*, DE91 at 26.

* * *

For these reasons, "an objective observer would reasonably doubt" that Defendants "would be treated impartially" before this Court. *United States v. S. Fla.*

Water Mgmt. Dist., 290 F. Supp. 2d 1356, 1361 (S.D. Fla. 2003). That recusal standard is critical to our judicial process, and this Court has recused itself consistent with that standard before. In *Kelly v. Davis*, No. 3:10-cv-392-MW/EMT, 2015 WL 5442789, at *9 (N.D. Fla. Aug. 24, 2015), plaintiffs' counsel moved to disqualify the Court based on unfounded and irresponsible allegations that the Court had improper *ex parte* conversations with his wife, an attorney with a firm only tangentially connected to a client in the case. The Court properly denied the plaintiffs' motion for disqualification based on counsel's "ungentlemanly, unprofessional, and completely unfounded attacks on [his] wife's character." *Id.* at *8. Nonetheless, the Court still recused itself because it "[was] concerned about [its] ability to completely set aside [its] initial reaction to this motion." *Id.* at *9. As the Court noted, even though it was confident that it would "fairly resolve whatever issues needed to be resolved to conclude t[he] case," "close questions should be resolved in favor of recusal." *Id.*

So too here. As the Court noted in *Kelly*, "[a] good judge should engage in self-reflection in determining whether to remain on a case." *Id.* The Court's prior statements at least raise a substantial question about whether the Court will resolve this matter fairly. And in a case garnering as much "public attention" as this one, *In re Boston's Children First*, 244 F.3d at 170, a "close question" like this "should be resolved in favor of recusal," *Kelly*, 2015 WL 5442789, at *9.

CONCLUSION

For the above reasons, the Court should recuse itself and order that the case be reassigned to another judge.

Dated: May 19, 2023

Respectfully submitted,

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* *pro hac vice motion forthcoming*
** *admission to the Northern District of Florida forthcoming*

CERTIFICATE OF CONFERRAL

Consistent with Local Rule 7.1(B), Defendants raised the issues identified in this motion with Disney. It opposes the requested relief.

/s/ John Guard
Chief Deputy Attorney General

CERTIFICATE OF COMPLIANCE

This motion complies with the requirements of Local Rule 7.1(F) because it contains 3,548 words.

/s/ John Guard
Chief Deputy Attorney General

CERTIFICATE OF SERVICE

I hereby certify that on May 19, 2023, a true and correct copy of the foregoing was filed with the Court's CM/ECF system, which will provide service to all parties.

/s/ John Guard
Chief Deputy Attorney General

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF FLORIDA

WALT DISNEY PARKS AND RESORTS, U.S., INC.,

Plaintiff,

v.

RONALD D. DESANTIS, in his official capacity as Governor of Florida; MEREDITH IVEY, in her official capacity as Acting Secretary of the Florida Department of Economic Opportunity; MARTIN GARCIA, in his official capacity as Board Chair of the Central Florida Tourism Oversight District; MICHAEL SASSO, in his official capacity as Board Member of the Central Florida Tourism Oversight District; BRIAN AUNGST, JR., in his official capacity as Board Member of the Central Florida Tourism Oversight District; RON PERI, in his official capacity as Board Member of the Central Florida Tourism Oversight District; BRIDGET ZIEGLER, in her official capacity as Board Member of the Central Florida Tourism Oversight District; and JOHN CLASSE, in his official capacity as Administrator of the Central Florida Tourism Oversight District,

Defendants.

Case No. 4:23-cv-00163-MW-MAF

PLAINTIFF'S OPPOSITION TO DEFENDANTS' MOTION TO DISQUALIFY CHIEF JUDGE MARK E. WALKER

Defendants have moved to disqualify Chief Judge Mark E. Walker ("the Court") under 28 U.S.C. § 455(a). Plaintiff Walt Disney Parks and Resorts U.S., Inc. ("Disney") opposes the motion and states as follows.

INTRODUCTION

Defendants' motion to disqualify is premised on a misapprehension of the law and a misstatement of the facts. Section 455(a) does not prescribe the hair-trigger disqualification standard defendants suggest. Section 455(a) instead authorizes disqualification only when a court's comments about the issues or parties in a case would cause a reasonable, fully-informed observer to have significant doubts that the court can approach the case with an open mind. As this Court, others in the District, and the Eleventh Circuit have emphasized, that standard establishes a high bar to disqualification—otherwise, parties could too easily use § 455(a) to effectively veto judges whose decisions they do not like and shop for a judge more to their liking.

Section 455(a)'s high threshold is well illustrated by the cases defendants cite as exemplars of when disqualification is required, which all prove by comparison why § 455(a) has no bearing here. Their leading case is *Franklin v. McCaughtry*, 398 F.3d 955 (7th Cir. 2005), which involved cartoonishly improper judicial conduct—a court that essentially launched an out-of-court vendetta against a defendant in a criminal case pending before the court. Other cases cited by defendants involve similar misconduct, i.e., a court making comments *to the press or public* about *a case pending before it*. As those cases make clear, out-of-court comments about a pending case create two reasonable concerns about the court's impartiality. First, judicial comments to the press on a pending case are so unusual and so unnecessary that they facially suggest some improper motivation on the judge's part. Second, they invariably expose the court

to "extrajudicial sources" of information about the case. Neither concern exists in this case, which does not involve any improper extrajudicial communications with the press or public about this case.

Defendants instead base their motion on two year-old hypothetical questions during prior judicial proceedings where the Court accurately referred to widely-publicized statements from Florida legislators about their intent to change the governing structure of the Reedy Creek Improvement District ("RCID") specifically because Disney expressed a political viewpoint disfavored by the legislators. The Court did not make any findings about those statements, but simply invoked them during oral arguments as examples to test arguments being advanced by counsel addressing different issues under different factual records.

Judges are not prohibited from referring accurately to widely-reported news events during oral arguments, nor must they disqualify themselves if cases related to those events happen to come before them months later. Disqualification is allowed only if the prior comments expose an incapacity on the judge's part to consider the new case on its own merits. The comments here come nowhere close to that standard.

Finally, as the Eleventh Circuit has emphasized, a disqualification motion should be viewed within the larger context of the court's rulings. That context here conclusively refutes any suggestion that this Court harbors bias against the Governor or the State. Not only has this Court repeatedly dismissed claims and cases asserted against the Governor and other State officers, but the Court recently ruled in favor of the relevant State defendants *in the very cases cited by defendants here as evidence of potential bias against them*. Far from proving bias, the cases confirm the Court's impartiality. The motion to disqualify should be denied.

ARGUMENT

A. Under § 455(a), Disqualification Is Authorized Only When A Reasonable, Fully-Informed Observer Would Perceive A Significant Risk That The Court Has A Closed Mind On The Merits Of The Case

Under 28 U.S.C. § 455(a), a judge must disqualify himself from "any proceeding in which his impartiality might reasonably be questioned." Section 455(a) permits disqualification only when "an objective, disinterested, lay observer fully informed of the facts underlying the grounds on which recusal was sought would entertain a significant doubt about the judge's impartiality." *United States v. Amedeo*, 487 F.3d 823, 828 (11th Cir. 2007) (applying standard to reject disqualification); *see In re Moody*, 755 F.3d 891, 894 (11th Cir. 2014) (same); *United States v. Scrushy*, 721 F.3d 1288, 1303 (11th Cir. 2013) (same); *Thomas v. Tenneco Packaging Co.*, 293 F.3d 1306, 1329 (11th Cir. 2002) (same); *Christo v. Padgett*, 223 F.3d 1324, 1333 (11th Cir. 2000) (same). Section 455(a) thus requires a court to determine whether the reasonable, fully informed observer would "perceive[] a significant risk that the judge will resolve the case on a basis other than the merits." *In re Mason*, 916 F.2d 384, 385 (7th Cir. 1990).

To meet that standard, a court's statements or conduct must demonstrate "an attitude or state of mind so resistant to fair and dispassionate inquiry as to cause a party, the public, or a reviewing court to have reasonable grounds to question the neutral and objective character of a judge's rulings or findings." *In re United States*, 158 F.3d 26, 34 (1st Cir. 1998) (quoting *Liteky v. United States*, 510 U.S. 540, 557-58 (1994) (Kennedy, J., concurring in judgment)). "Thus, under § 455(a), a judge should be disqualified only if it appears that he or she harbors an aversion, hostility or disposition of a kind that a fair-minded person could not set aside when judging the dispute." *Id.*; *see Ark. Teacher Ret. Sys. v. State Street Bank & Trust Co.*, 404 F. Supp. 3d 486, 494 (D. Mass. 2018) (same). In other words, a prior statement relating to the

parties or issues in a case will be "disqualifying only if it connotes a fixed opinion, a closed mind on the merits of the case." *United States v. Haldeman*, 559 F.2d 31, 136 (D.C. Cir. 1976) (quotation omitted); *see In re Wilborn*, 401 B.R. 848, 860 (Bankr. S.D. Tex. 2009) (same).

In determining whether the facts reasonably show that the court's mind is closed to the merits, the court "should adopt the perspective of a 'well-informed, thoughtful and objective observer, rather than the hypersensitive, cynical, and suspicious person.'" *Liberty Mut. Ins. Co. v. Com. Concrete Sys., LLC*, 2017 WL 1234140, at *3 (N.D. Fla. Apr. 1, 2017) (Walker, J.) (quoting *United States v. Jordan*, 49 F.3d 152, 156 (5th Cir. 1995)).

Finally, a court evaluating a motion to disqualify must "remain vigilant to the need to prevent parties from too easily obtaining the disqualification of a judge, thereby potentially manipulating the system for strategic reasons, perhaps to obtain a judge more to their liking." *Id.* at *8 (quotation omitted). Indeed, "[b]inding precedent holds that 'there is as much obligation for a judge not to recuse when there is no occasion for him to do so as there is for him to do so when there is,'" *Common Cause Fla. v. Lee*, 2022 WL 2343366, at *5 (N.D. Fla. Apr. 6, 2022) (Winsor, J.) (quoting *Moody*, 755 F.3d at 895), as this Court has previously recognized, *see Liberty Mutual*, 2017 WL 1234140, at *6. Although "[o]ne might argue that a judge facing a public call to recuse could alleviate even a *hint* of impartiality by stepping aside, even when the law does not demand it," the "Eleventh Circuit has emphasized that this is not the answer: 'If this occurred the price of maintaining the purity of the appearance of justice would be the power of litigants or third parties to exercise a veto over the assignment of judges.'" *Common Cause*, 2022 WL 2343366, at *5 (quoting *United States v. Greenough*, 782 F.2d 1556, 1558); *see Smartt v. United States*, 267 F. Supp. 2d 1173, 1177 (M.D. Fla. 2003) (because § 455(a) "is not intended to bestow a veto power over judges, or to permit 'judge-shopping,'" court "has as strong a duty

to sit when there is no legitimate reason to recuse as he does to recuse when the law and facts require"). For these reasons, if "the standards governing disqualification have not been met, disqualification is not optional; rather, it is prohibited." *In re Aguinda*, 241 F.3d 194, 201 (2d Cir. 2001).

B. The Two Cited Remarks Do Not Reasonably Suggest That The Court Has A Closed Mind On The Merits Of This Case

Applying the principles recited above, "courts have only granted recusal motions in cases involving particularly egregious conduct." *Belue v. Leventhal*, 640 F.3d 567, 573 (4th Cir. 2011). The conduct here was nothing of the kind. The two comments defendants cite provide no basis on which a reasonable, fully-informed person could perceive any risk—much less a significant risk—that the Court's mind is closed and that it is incapable of fair and dispassionate inquiry into the legal and factual issues in this case. Both comments were merely brief, illustrative examples used to frame hypothetical questions about different issues. Neither remark reflects a conclusive finding about the distinct circumstances here or demonstrates that the Court has a fixed opinion and closed mind "resistant to fair and dispassionate inquiry" (*United States*, 158 F.3d at 34 (quotation omitted)) into the distinct claims and defenses that will be asserted in this case, based on a complete record of evidence and briefing on legal standards and requirements.

Defendants first cite a statement from a hearing in *Link v. Corcoran*, No. 4:21-cv-271-MW-MAF (N.D. Fla.), made as the Court was querying counsel for plaintiffs about the evidence she was relying on to support plaintiffs' standing theory. Plaintiffs there challenged the distribution of a survey to state universities about political views on campus. To claim injury from the mere distribution of a survey, plaintiffs alleged that that their speech was chilled because the State intended to cut university funding if the survey reported "liberal" political

orientations. In its colloquy with plaintiffs' counsel excerpted by defendants here, the Court probed the plaintiffs' assertion that the State would act imminently to harm them:

> THE COURT: . . . I don't understand how—it seems to me how you can say that threat, the chill, is reasonable when you've got to assume so many things. I mean, it requires you to assume the survey will show that liberal views are widespread on campus. You've got to assume the legislature will react by reducing their school funding and that the funding will directly harm those plaintiffs . . . aren't there too many inferential steps for me to make at this juncture to find the chill is reasonable?
>
> MS. VELEZ: Your Honor, there's a lot to parse here. And the first that I want to draw the Court's attention back to is that we think that the inquiry and the asking is a harm in and of itself. That's under the *Baird* decision. But, of course, we're primarily attacking—
>
> THE COURT: But in that case, though—again, I just can't let it go. In that case, though, isn't the reason why that chill would be reasonable is you knew who I am and you know what my responses are, so you can target me directly?
> I mean, I've already ruled, and the Eleventh Circuit will do what it does, but, you know, in the UF professor case, the chill—they knew who they were targeting, and they could target individuals, and so there was—and had announced their intent to do so, per the head of the board of trustees. So, I mean, there was facts before the Court that would—didn't require you to make a—stack inferences, but there were facts before the Court from which such a reasonable fear could be adduced from the record, other than the assumption—well, let me ask you this. *What's in the record, for example—is there anything in the record that says we are now going to take away Disney's special status because they're woke? Is there anything in the record that says—that you put in the record that says we are going to slash the funding?* We did, in fact, take away millions of dollars from school boards because they had the audacity to require their students to wear masks during a pandemic.
>
> What sort of—and *I'm not suggesting that would be determinative in this case, but is that even in the record to say, Well, Judge, here's what we've got in the record that shows these fears are well founded?* Because, you know, Judge, if somebody says, I'm going to hit you with a baseball bat, take them at their word; they're going to hit you with a baseball bat. They announced it, and . . . they've, in fact, done it in the past because here are the three people that just got hit with the baseball bat.
>
> *So what do we have in the record that would support such a finding?*

> MS. VELEZ: Well, Your Honor, I mean, of course, we think that we should take defendants at their word and everyone at their word. But, again, the larger point—
>
> THE COURT: . . . *What's in the record . . . that shows these very people have taken putative measures against those they've described as woke in other contexts?*

Daily Transcript of Preliminary Injunction Proceedings ("*Link* Tr.") at 21:25-24:11, *Link v. Corcoran*, 4:21-cv-271-MW-MAF (N.D. Fla. Apr. 1, 2022) (emphasis added).

Viewed in context—as a reasonable, fully-informed observer would view it—the Court's reference to legislators' explicitly, well-publicized comments about Disney is entirely unobjectionable. The issue the Court was probing in *Link* was whether the plaintiffs had *any* support for their theory that the State planned to harm them specifically because of their political viewpoints. To frame the issue, the Court first observed that in a prior case involving a University of Florida professor, the plaintiff successfully asserted that the Board of Trustees had explicitly stated its intention to target the plaintiff. The Court was asking whether the *Link* plaintiffs could identify comparable express statements. The Court then referred to widely-reported, undisputed statements by legislators about Disney to ask the same question—were the *Link* plaintiffs relying on similarly express statements to support their theory of injury?

It is unsurprising and entirely appropriate that the Court would refer to state legislators' Disney-related statements in probing the *Link* plaintiffs' evidence about the State's future plans. As defendants here admit, the argument in *Link* occurred just days after numerous state legislators began making repeated, widely-reported, undisputed comments that they intended to dissolve RCID specifically because Disney had expressed a political viewpoint the legislators found objectionable. Defs.' Mot. to Disqualify Chief

Judge Mark E. Walker at 5, ECF No. 33 ("Those state-official remarks about RCID were widely reported in the news cycles surrounding the *Link* preliminary-injunction hearing, as were many similar statements."). The statements thus provided a public, ready-made comparison to help the Court test the nature of the *Link* plaintiffs' own support for their claims about the State's intentions. *Link* Tr. at 24. Whether or not the legislators' statements about Disney would actually *prove* a substantive case of retaliation—if one were ever brought—was not before the Court in *Link* and not addressed in its questioning. Nothing about the *Link* colloquy reasonably suggests that when the actual facts, claims, and defenses are fully developed in this case, the Court will be unable to assess that complete record with an open mind.

The same is true for the analogous comment made during a hearing in *Falls v. DeSantis*, No. 4:22-cv-166-MW-MJF (N.D. Fla.), which also occurred near in time to the legislators' many public statements about Disney. As in *Link*, the comment was purely for illustration—a hypothetical offered in the course of querying counsel about the evidence required to satisfy standing requirements. In *Falls*, the reference came during a colloquy with counsel for the defense, who was arguing that plaintiffs' claims about potential retaliation were too "conjectural." To test that argument, the Court asked whether it would be less conjectural if the plaintiff could identify other incidents where the State took actions against individuals because they expressed disfavored political viewpoints. As an illustration, the Court again invoked the timely, widely-reported example of the Florida Legislature planning to dissolve RCID "arguably" because of Disney's political speech:

> MR. COOPER: Thank you, Your Honor. Charles Cooper again for the defendants.

> Your Honor, with respect to Dr. Cassanello in particular, we think the basic theory of the hipbone-connected-to-the-thigh-bone injury that Dr. Cassanello is alleging here is simply not a sufficient injury-in-fact to create an invasion of a legally protected interest which is concrete and particularized and actual or imminent, not conjectural or hypothetical. And, Your Honor, the potential downstream consequences that the plaintiffs are saying provides the professor with his standing are simply quite conjectural. We've—
>
> THE COURT: Does it make any difference that in—just in recent history when schools or entities or organizations have not complied with what is demanded by Tallahassee that funding has been cut, for example, the face mask? Does that make it any less speculative and less conjectural?
>
> MR. COOPER: Your Honor, I don't think so because we certainly concede that there is the possibility of that form of enforcement against the institutions, and that is, as you say, a recent example of that authority being exercised by the—I guess here, the Board of Governors.
>
> THE COURT: *And then Disney is going to lose its status because—arguably, because they made a statement that run afoul—ran afoul of state policy of the controlling party. At what point do you stack so many examples where punitive actions are taken if you don't do what you are told that suddenly it no longer becomes conjectural and you pass that threshold so you can establish standing?* It's no longer fanciful or conjectural.

Transcript of Preliminary Injunction Proceedings at 77:23-79:2, *Falls v. DeSantis*, 4:22-cv-166-MW-MJF (N.D. Fla. June 21, 2022) (emphasis added).

The Court again did not purport to make any findings or rulings about the actual facts concerning the State's motivation for dissolving RCID or replacing its Board (which happened almost a year later). Nor did the Court announce any committed view to what a fully developed record would show about that motivation. Rather, the Court asked an expressly hypothetical question: *if* it were shown that the State acted in retaliation against Disney—if the Court's "arguably" qualifier were proven as fact, that is—would that showing support plaintiff's claims about likely injury? Posing a hypothetical question using an accurate statement of reported facts does not reflect any unshakeable prejudgment about the premise of the question or the issues it probes. Whether retaliation against Disney had actually occurred was not at issue in *Falls* and

was not addressed by the Court. As with the *Link* colloquy, nothing about the single question asked in *Falls* would give a reasonable observer any basis for concluding that the Court will be incapable of considering all the facts, claims, and defenses in this case fairly and with an open mind.

Not only do the *Falls* and *Link* remarks fail to justify disqualification on their own terms, but viewing them both in their broader context further undermines the case for disqualification. In *Thomas*, the Eleventh Circuit rejected disqualification in part because "other actions of the district judge" demonstrated "his objectivity and neutrality." 293 F.3d at 1330. The same is true here in spades. In particular, this Court (like any other district court) has heard many cases involving claims against the Governor and other State officers and agencies. And as the Court is well aware, it has often ruled in their favor—indeed, too often to cite the decisions exhaustively.[1] But two particularly telling examples are the very cases defendants cite, *Link* and *Falls*, both of which the Court dismissed for lack of standing—in *Falls*, on the very same day defendants filed this motion. *See Falls v. DeSantis*, 2023 WL 3568526 (N.D. Fla. May 19, 2023); *Link v. Diaz*, 2023 WL 2984726 (N.D. Fla. Apr. 17, 2023). Those rulings provide especially salient proof of the Court's fairness and neutrality.

In addition to dismissing cases like *Link* and *Falls* based strictly on the merits, the Court itself last year observed that it "has not been shy about dismissing Governor DeSantis from cases where he did 'not have more than "some connection" with the underlying claim.'" *Falls v.*

[1] Illustrative decisions dismissing claims or cases against the Governor himself include *Support Working Animals, Inc. v. DeSantis*, 457 F. Supp. 3d 1193, 1226 (N.D. Fla. 2020); *Namphy v. DeSantis*, 493 F. Supp. 3d 1130, 1137 (N.D. Fla. 2020); *Dream Defs. v. DeSantis*, 553 F. Supp. 3d 1052, 1098 (N.D. Fla. 2021); *Bowles v. DeSantis*, 2019 WL 10631192, at *4 (N.D. Fla. July 19, 2019); *Israel v. DeSantis*, 2020 WL 2129450, at *27 (N.D. Fla. May 5, 2020); *Nevels v. DeSantis*, 2021 WL 121211, at *1 (N.D. Fla. Jan. 13, 2021).

DeSantis, 2022 WL 19333278, at *1 (N.D. Fla. July 8, 2022) (citing *Namphy v. DeSantis*, 493 F. Supp. 3d 1130, 1137 (N.D. Fla. 2020); *Support Working Animals, Inc. v. DeSantis*, 457 F. Supp. 3d 1193, 1209 (N.D. Fla. 2020)). The Court's proven even-handedness applies fully to cases involving political claims and issues such as voting rights and electoral districting. In *League of Women Voters, Inc. v. Lee*, 595 F. Supp. 3d 1042 (N.D. Fla. Mar. 31, 2022), the Court's Final Order reported its record of decisions on voting-related cases:

> All told, I have heard 17 cases related to voting in Florida. I ruled against Florida in six of those 17 cases. Of those six, Florida appealed two. For one, a motions panel denied a motion to stay this Court's order, and a superseding change in the law then rendered the case moot. On the other, the Eleventh Circuit reversed. As for the other four, Florida did not appeal and changed the law to conform with this Court's orders . . . . Of the remaining 11 cases in which this Court ruled for the state, only one was appealed, and eventually affirmed.

Id. at 1062 n.7 (citations omitted).

Especially given the Court's lengthy record of consistent fairness and objectivity, no reasonable, fully-informed observer could possibly conclude from its brief questions in the *Link* and *Falls* arguments that the Court "harbors an aversion, hostility or disposition of a kind that a fair-minded person could not set aside when judging the dispute." *United States*, 158 F.3d at 34 (quotation omitted).[2]

[2] In a footnote, defendants refer to the Court's observation in its final written order in *Link* that there was "abundant testimony" in that case showing that "lawmakers who sponsored or supported" the statute at issue there had "embraced rhetoric directed at the 'woke' boogeyman of the day" and thereby "signaled a suspicion of, and outright hostility toward, certain viewpoints." *Link*, 2023 WL 2984726, at *2. Defendants omit to mention that the Court's order goes on to find that such statements did *not* suffice to prove that plaintiffs' speech had been chilled. *See generally id.* Nor do defendants acknowledge the long-settled rule that knowledge and opinions may be "properly and necessarily acquired in the course of [judicial] proceedings," and that "opinions held by judges as a result of what they learned in earlier proceedings" do not qualify as "bias" or "prejudice." *Liteky v. United States*, 510 U.S. 540, 551 (1994).

C. The Few Cases Defendants Cite To Show When Disqualification Is Required Merely Illustrate Why Disqualification Is Not Authorized Here

Defendants cite several cases reciting the controlling legal standard, but almost none that actually mandate disqualification under that standard. And the few that actually required disqualification involved "particularly egregious conduct," *Belue*, 640 F.3d at 573, which only shows why disqualification is *not* warranted on the facts of this case.

The case defendants emphasize most heavily is *Franklin v. McCaughtry*, 398 F.3d 955 (7th Cir. 2005). In that case, a state judge overseeing the pending trial of the defendant Franklin took the bizarre step of submitting a memorandum to an appellate court in *another* case that argued against releasing that second defendant pending appeal. To support his argument, the judge recited lengthy details about Franklin's criminal history and cited him as a cautionary "example of the terrible things that happen when indigent prisoners are released on bail pending their appeals: they simply commit more crimes while free." *Id.* at 961. The judge then made matters even worse: after a newspaper published an article about the two cases, the judge initially refused to admit any connection to the article, then eventually grudgingly confessed to having filed the appellate memorandum. In fact, the memorandum was a key basis for the article, and the judge had never previously disclosed it to Franklin. To top it all off, the judge then read his memorandum into the record of Franklin's case, even though it included many facts from extrajudicial sources that had not previously been introduced. *Id.* at 958.

On that remarkable record, the Seventh Circuit concluded that "despite the judge's use of the magic word 'alleged' in the memorandum, the inference is irresistible that the judge was pointing to Franklin as the latest such incorrigible criminal, even though Franklin's trial had not yet taken place." *Id.* at 961. The court also emphasized that the memorandum and the judge's "contacts with the newspaper were extrajudicial activities vis-à-vis Franklin's own case" under

the "extrajudicial source" rule addressed in *Liteky v. United States*, 510 U.S. 540 (1994). *Franklin*, 398 F.3d at 961; *see infra* at 14-15 (discussing extrajudicial source doctrine).

This case bears no comparison to *Franklin*—there is no long litany of unethical acts, no obfuscation by the judge of blatantly unethical conduct, and no persistent targeting of the party in a pending case through extrajudicial acts.

Among the most important of the many foregoing distinctions is that the *Franklin* judge made his ill-considered comments to the newspaper and in his appellate memorandum *while the case against Franklin was pending*. The same is true in other cases defendants proffer as exemplars of when disqualification is required. Defendants cite only four other cases where the disqualification standard was met, and in three of them, the judge was disqualified for making out-of-court statements to the press or the public about a pending case, just as in *Franklin*. *See United States v. S. Fla. Water Mgmt. Dist.*, 290 F. Supp. 2d 1356, 1358, 1360 (S.D. Fla. 2003) (judge "quoted and cited as a source in five newspaper articles" discussing issues in case, making it "evident that extrajudicial sources may have influenced [the judge] or, at least, there is a reasonable appearance of such influence," because "meetings between [the judge] and reporters are themselves evidence of extrajudicial sources, as these interviews are not merely one-way conversations"); *In re Boston's Children First*, 244 F.3d 164, 166, 170 (1st Cir. 2001) (judge wrote letter to *Boston Herald* about pending case and was interviewed about it, giving comments that could be construed "as a preview of a ruling on the merits of petitioner's motion for class certification, despite the fact that defendants had not yet filed a response to that motion"); *United States v. Cooley*, 1 F.3d 985, 995 (10th Cir. 1993) (judge appeared on *Nightline* to express strong public message to public about compliance with court's injunction that "conveyed an uncommon

interest and degree of personal involvement in the subject matter" and created "justified doubt as to his impartiality in the case involving these defendants").[3]

The Court here did no such thing—the Court's passing references to the legislators' widely-reported statements about their intent to take actions against Disney were made almost a full year *before* this case was filed, and they were made during judicial proceedings. There is no basis for expecting the Court would engage in the kind of inappropriate public communications that occurred in the cases defendants cite. Accordingly, contrary to defendants' misleading assertion (ECF No. 33 at 10), this case does not implicate the observation in *Boston's Children* that "the very rarity of such public statements, and the ease with which they may be avoided, make it more likely that a reasonable person will interpret such statements as evidence of bias." 244 F.3d at 170. That observation has force when a court goes out of its way to address the public about the issues or parties in a case pending before it—such a decisive break from accepted protocol reasonably suggests the judge is being driven by passion or bias rather than by reason. To hammer the square peg of that laudable principle into the round hole of this case, the defendants literally rewrite the passage from *Boston's Children* so it refers to "the rarity of [these kinds of] public statements," ECF No. 33 at 10 (alteration added by defendants), as if the passage specifically condemns the kinds of statements at issue here. It does no such thing. It instead addresses an extrajudicial letter to the editor and a newspaper interview expressing specific

[3] In the only other case cited by defendants to show when disqualification is required, the judge's law clerk, who drafted an opinion granting summary judgment to defendants and even held a hearing in the judge's absence, was the son of a partner in the firm representing defendants. *See Parker v. Connors Steel Co.*, 855 F.2d 1510, 1524-25 (11th Cir. 1988). *Parker* is thus another case with especially egregious facts that serves only to show why the anodyne facts here fall well short of the disqualification standard.

views on the merits of issues in a case pending before the court—serious judicial misconduct that has nothing to do with this case.

For similar reasons, defendants err in relying on the "extrajudicial source" doctrine, contending that "disqualification is especially appropriate here because the Court's comments 'stem from extrajudicial sources' and were 'focused against a party [in] the proceeding.'" ECF No. 33 at 13 (quoting *Hamm v. Members of Bd. of Regents*, 708 F.2d 647, 651 (11th Cir. 1983)). The extrajudicial source doctrine applies when a court expresses opinions about issues or parties *in a pending case* that are based on extrajudicial sources. *See*, *e.g.*, *Liteky*, 510 U.S. at 555 (addressing "judicial remarks *during the course of a trial* that are critical or disapproving of, or even hostile to, counsel, the parties, or their cases," which "ordinarily do not support a bias or partiality challenge," but "*may* do so if they reveal an opinion that derives from an extrajudicial source" (first emphasis added); *Thomas*, 293 F.3d at 1330 (applying extrajudicial source doctrine, but declining to disqualify, based on comments about issues and parties made during pending case); *Christo*, 223 F.3d at 1333-34 (same); *Hamm*, 708 F.2d at 651 (same). Even when a court expresses an opinion about issues or parties during a pending case, an "extrajudicial source" for that opinion is by itself "neither necessary nor sufficient to require recusal." *Bell v. Johnson*, 404 F.3d 997, 1004 (6th Cir. 2005). But the more decisive point for present purposes is that the Court here has not made any comments or rulings *in this case* based on extrajudicial sources or communications of any kind, so the doctrine is categorially inapplicable.

While the extrajudicial source doctrine rightly cautions against courts expressing opinions in pending cases based on sources outside the record, there is no comparable restriction on courts referring to widely-reported matters of public record (long before any case is filed about them) to frame questions during oral arguments. Our judicial system does not "expect

judges to live as moles, roving about the limited underground landscape of the official record but never perceiving the illuminated world at the surface." *United States v. Carey*, 929 F.3d 1092, 1105 (9th Cir. 2019). To the contrary, in "our modern, interconnected, endlessly broadcast world, complete blinders are impracticable, as a reasonable person would surely conclude." *Id.* Put more simply: "An open mind is required; an empty mind is not." *Dean v. Colvin*, 585 Fed. Appx. 904, 905 (7th Cir. 2014).

For these reasons, courts have rejected motions to disqualify based on prior comments about issues or parties in a case that later ends up before them, so long as the prior comments were not so conclusive as to demonstrate the lack of an open mind in the later-filed case. *See*, *e.g.*, *In re City of Milwaukee*, 788 F.3d 717, 723 (7th Cir. 2015) (rejecting disqualification where judge previously made comments in opinions and conferences in related stop-and-frisk cases); *In re Sherwin-Williams Co.*, 607 F.3d 474, 476-79 (7th Cir. 2010) (rejecting disqualification where judge previously authored law review article addressing key issue in case); *Starbuck v. RJ. Reynolds Tobacco Co.*, 59 F. Supp. 3d 1377, 1382 (M.D. Fla. 2014) (rejecting disqualification where judge previously made comments critical of defendants in published article). The passing remarks at issue here are *much* less declarative than the prior statements made in *Milwaukee*, *Sherwin-Williams*, and *Starbuck*, where disqualification was denied; it follows a fortiori that disqualification is improper here as well. Indeed, as already noted, defendants have not cited a single case mandating disqualification on facts remotely similar to the facts here. This case should not be the first.

CONCLUSION

For the foregoing reasons, the motion to disqualify should be denied.

Dated: May 25, 2023

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that, on May 25, 2023, I electronically filed the foregoing with the Clerk of Court using the CM/ECF system, which will provide electronic service to all parties.

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IN THE UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF FLORIDA
TALLAHASSEE DIVISION

WALT DISNEY PARKS AND RESORTS U.S., INC.,

***Plaintiff*,**

v. **Case No.: 4:23cv163-MW/MJF**

RONALD D. DESANTIS, in his official capacity as Governor of Florida, et al.,

***Defendants*.**

_____/

ORDER ON DISQUALIFICATION

I have considered, without hearing, Defendants' motion to disqualify me, ECF No. 33, and Plaintiff's response, ECF No. 43. For the reasons that follow, Defendants' motion is **DENIED**. Nonetheless, I find disqualification required for a different reason.

I

Defendants seek to disqualify me from presiding over this case because, in their view, questions I have asked in previous, related cases raise substantial doubts about my impartiality. ECF No. 43 at 9. In response, Plaintiff argues, in short, that "Defendants' motion to disqualify is based on a misapprehension of the law and a misstatement of the facts." ECF No. 43 at 2.

Under 28 U.S.C. § 455(a), a judge must disqualify himself from "any proceeding in which his impartiality might reasonably be questioned." Section 455(a) mandates disqualification only when "an objective, disinterested, lay observer fully informed of the facts underlying the grounds on which disqualification was sought would entertain a significant doubt about the judge's impartiality." *United States v. Amedeo*, 487 F.3d 823, 828 (11th Cir. 2007). For disqualification under section 455(a), "what matters is not the reality of bias or prejudice but its appearance." *Liteky v. United States*, 510 U.S. 540, 548 (1994). "[W]hen a judge harbors any doubts concerning whether his disqualification is required he should resolve the doubt in favor of disqualification." *Parker v. Connors Steel Co.*, 855 F.2d 1510, 1524 (11th Cir. 1988).

Defendants' motion is without merit. My use of hypothetical questions referencing facts related to this case, *in an earlier case also dealing with the motivations of political actors* (including some of the same actors here), cannot raise a substantial doubt about my impartiality in the mind of a fully informed, disinterested lay person. As Plaintiff aptly notes, Defendants rely on cases involving "cartoonishly improper judicial conduct . . . ." ECF No. 43. Defendants cherry-pick language from these cases to support their position without acknowledging the wholly distinguishable context underlying each decision. For example, Defendants cite *United States v. South Florida Water Management District*, 290 F. Supp. 2d

1356, 1361 (S.D. Fla. 2003) for the assertion that an objective observer would have a significant doubt that I would treat Defendants impartially. What Defendants fail to acknowledge is that the court in that case found disqualification under § 455(a) required only where the judge in question gave several interviews to reporters and expressed his plain disfavor of legislation that ultimately came before him.[1] His comments to reporters and in orders included the following:

- "I think [Governor] Bush is a good man and he means well, . . . But I'm afraid he fell into the hands of those who don't like the Everglades" and that "[w]hen the governor signs this bill—and he will, I think, sign it—the South Florida Water Management District has got to be watched."

- "I think [Governor Bush is] doing what he thinks is right. He just doesn't agree with me."

- "I'll tell you one thing I'm sure of, we're going according to the old law, . . . and we're going to make sure of that."

- The "Court does not yet have cause to attempt to apply the legislation, and I sincerely hope I am never obliged to do so, for the bill is clearly defective in many respects. . . . While I am deeply troubled by the content of the bill, I am dismayed by the process that led to its passage. The bill was moved quickly through the legislative process, reportedly at the behest of more than forty lobbyists for the sugar industry."

[1] Defendants cite other dissimilar cases as well, including *United States v. Cooley*, 1 F.3d 985, 995 (10th Cir. 1993) (finding disqualification necessary where a judge gave an interview to Barbara Walters on *Nightline* warning litigants in a case before him to obey his prior orders) and *In re Boston's Child. First*, 244 F.3d 164, 167 (1st Cir. 2001) (finding disqualification necessary where judge gave an interview to a reporter and compared the merits of a prior case to a case before her).

Id. at 1360–61. The statements at issue in this case fall far short of this conduct and do not merit disqualification under 28 U.S.C. § 455(a).

Defendants' motion cites cases for their convenient language without acknowledging the chasm between my statements in this case and the conduct at issue in those cases. Without exploring all the other defects in the motion, for the reasons noted above and as thoughtfully outlined in Plaintiff's response, Defendants' motion is wholly without merit. In fact, I find the motion is nothing more than rank judge-shopping. Sadly, this practice has become all too common in this district. *Cf. Common Cause Fla. v. Lee*, Case No. 4:22-cv-109-AW-MAF, 2022 WL 2343366, at *1 (N.D. Fla. Apr. 6, 2022) (dismissing meritless motion to disqualify in a redistricting case).

However, Defendants did get one thing right. That is, if a judge has doubts over whether disqualification is required, he should resolve those doubts in favor of disqualification. I have consistently followed this principle. For example, I have disqualified myself where, after holding a hearing to investigate the issue, I learned that a former state-court colleague might be called as a witness in the case. *G.H. v. Tamayo*, Case No. 4:19cv431-MW-MJF (N.D. Fla. Mar. 11, 2021).[2] But this is not

[2] Defendants' reliance on *Kelly v. Davis*, No. 3:10CV392-MW/EMT, 2015 WL 5442789, at *9 (N.D. Fla. Aug. 24, 2015) is misleading. Defendants cite *Kelly* for the proposition that I have disqualified myself in close calls before. I did acknowledge that close calls favor disqualification, *see id.* at 5, but I also explained—in plain terms—that my decision on the merits of the motion to disqualify was "not a close call," *id.* at 6. In fact, I explicitly found that the motion to disqualify was "wholly without merit." *See id.* The "close question" that led me to disqualify myself, raised

a close case. And I have "as much obligation . . . not to [disqualify myself] when there is no occasion for [me] to do so as there is for [me] to do so when there is." *See In re Moody*, 755 F.3d 891, 895 (11th Cir. 2014) (quoting *United States v. Burger,* 964 F.2d 1065, 1070 (10th Cir.1992)).

But that doesn't end the inquiry. My ethical obligations are not limited to what the parties raise. Instead, I must evaluate all potential grounds for disqualification. Next, I explain why I must disqualify myself for reasons unrelated to Defendants' meritless motion.

II

Although Defendant's motion to disqualify is without merit, I must consider a separate question of whether I should disqualify myself. On Friday, May 26, 2023, I learned, and later confirmed, that a relative within the third degree of relationship owns thirty shares of stock in Plaintiff's parent corporation, The Walt Disney Company. Upon learning this information, I became obligated to engage in a separate inquiry pursuant to the Code of Conduct for United States Judges to determine if the financial interest of my third-degree relative "could be substantially affected by the outcome of [this] proceeding." Canon 3C(1)(d)(iii).[3] I have engaged

sua sponte, stemmed from my doubt that I could set aside my resentment of the movant's scurrilous attacks on my family. *Id.* at 9. Of course, in explaining my reasons for disqualification in *Kelly*, I am certainly *not* inviting parties to judge-shop by making scurrilous attacks on my family in future cases.

[3] I pause to note that the Code of Conduct for Unites States Judges does not impose a duty on judges to inquire into the financial interests of third-degree relatives. *See* Canon 3C(1)(d)(iii)

in that inquiry and determined that disqualification from this proceeding is required under the circumstances.

Next, I discuss the relevant Canon of the Code of Conduct for United States Judges and Advisory Opinions construing it. After setting out the pertinent facts, I apply those rules to this case.

A

Canon 3C of the Code of Conduct for United States Judges describes several situations where a judge's impartiality may be reasonably questioned and when a judge should disqualify himself from a proceeding. Although some sections of Canon 3C impose bright-line rules for disqualification, others require judges to engage in fact-intensive inquiries to determine whether disqualification is proper under the circumstances. The section applicable here requires a fact-intensive inquiry.[4]

When a judge becomes aware that a third-degree relative has a financial interest that may be affected by the outcome of a proceeding, such as the case here,

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(stating that a judge must disqualify himself when it is "*known* by the judge" that a person "within the third degree of relationship" has a financial interest that "could be substantially affected by the outcome of the proceeding") (emphasis added); *cf*. Committee on Codes of Conduct Advisory Opinion No. 90 (explaining duty to inquire when relatives may be members of a class action). Only when a judge becomes aware of the relevant financial interests of a third-degree relative must that judge determine whether the proceeding's outcome could substantially affect the third-degree relative's financial interests. *Id*.

[4] One example of a bright-line rule for disqualification is when a judge, a judge's spouse, or a judge's minor child residing in a judge's household "has a financial interest in the subject matter in controversy or in a party to the proceeding . . . ." Code of Conduct for United States

that judge must determine whether the third-degree relative's financial interest "could be *substantially affected* by the outcome of the proceeding." Code of Conduct for United States Judges, Canon 3C(1)(d)(iii) (emphasis added). An affirmative answer to that question requires disqualification from the proceeding.[5] The size or dollar amount of the third-degree relative's financial interest is irrelevant, as it is "not the size of the interest that is a concern under [Canon 3C], but rather whether the interest could be substantially affected." Committee on Codes of Conduct, Advisory Opinion No. 94. Thus, a judge's knowledge that a third-degree relative owns just one share of stock in a corporation, with the price of that stock being a single dollar per share, is enough to trigger the obligation to determine if the proceeding's outcome could substantially affect the value of that single share of stock.[6] *See id*. To any non-attorney, the standard imposed by Canon 3C(1)(d)(iii)

Judges, Canon 3C(1)(c). Under such circumstances, the judge must disqualify himself from the relevant proceeding. For that reason, if I, my spouse, or a minor child residing in my household owned shares of The Walt Disney Company, then I would have disqualified myself immediately.

[5] Under most circumstances, divestiture of a financial interest causing a judge's impartiality to be reasonably questioned is enough to alleviate the concerns surrounding that judge's impartiality. Here, however, divesture would not have the same curative effect. *See* Code of Conduct for United States Judges, Canon 3C(4) ("Notwithstanding the preceding provisions of this Canon, if a judge would be disqualified because of a financial interest in a party (*other than an interest that could be substantially affected by the outcome*), disqualification is not required if the judge (or the judge's spouse or minor child) divests the interest that provides the grounds for disqualification.") (emphasis added).

[6] It is not relevant to the analysis that my third-degree relative owns stock in the Plaintiff's parent corporation and not in Plaintiff itself. Under the Code of Conduct for United States Judges, the owner of stock in a parent corporation is considered to have a financial interest in that parent

may seem counterintuitive. It is hard to imagine that a third-degree relative's investment of one dollar could sway a judge. Even so, Canon 3C is clear that the impact on the third-degree relative's investment—not the amount of the investment—governs disqualification.

Canon 3C does not define the term "substantially affected," and the Advisory Opinions issued by the Committee on Codes of Conduct provide only limited guidance on the matter.[7] In the context of determining when a judge's financial royalty interests in oil or gas could be substantially affected by the outcome of a proceeding, the Committee on Codes of Conduct has stated that "a $.60 per month increase would not have a substantial impact on a judge's utility bill" but that "the doubling of a utility bill from $10 to $20 per month would be substantial." Committee on Codes of Conduct, Advisory Opinion No. 94. Extending this guidance to the present case, where the financial interest in question is thirty shares of stock in The Walt Disney Company, a six-percent change in the value of The Walt Disney Company's stock as a result of these proceedings would not be substantial under Canon 3C(1)(d)(iii), but a fifty-percent change in the stock's value would be. Still,

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corporation's controlled subsidiaries. *See* Committee on Codes of Conduct, Advisory Opinion No. 57 ("The Committee concludes that under the Code the owner of stock in a parent corporation has a financial interest in a controlled subsidiary.").

[7] The dearth of guidance on what "substantially affected" means within Canon 3C(1)(d)(iii) is not surprising, given that the share prices of most publicly traded companies are unlikely to be substantially affected by the outcome of litigation in which the companies are involved.

the exact threshold for when a proceeding rises to the level of substantially affecting a financial interest remains unclear. Another open question is the relevant time horizon (i.e., the length of time during which the value increases or decreases) for determining whether a proceeding substantially affects a financial interest.[8]

B

Now to this case. In its own complaint, Plaintiff, the owner and operator of Walt Disney World Resort in Central Florida, alleges that it has been the victim of a "targeted campaign of government retaliation" that now "threatens [Plaintiff's] business operations, jeopardizes its economic future in the region, and violates its constitutional rights." ECF No. 25 at ¶¶ 2, 4. Plaintiff alleges that Florida's oversight board, at the request of Defendant Governor Ron DeSantis ("Governor DeSantis"), has stated that it will "void" Plaintiff's "publicly noticed and duly agreed development contracts," which Plaintiff alleges has "laid the foundation for billions of Disney's investment dollars . . . ." *Id*. Plaintiff claims that it "seeks to invest up to $17 billion in capital . . . in the region over the next decade" and that "development and investment of this magnitude cannot effectively take place when it can be nullified or undermined at the whim of new political leadership." *Id*. at ¶¶ 105–106. Plaintiff also alleges that Governor DeSantis publicly stated that he plans "to look at

[8] This inquiry is made even more difficult by attempting to parse the precise reasons a stock's value may increase or decrease over time.

things like taxes on the hotels," "tolls on the roads," "developing some of the property that the district owns" with "more amusement parks," and even putting a "state prison" next to the Walt Disney World Resort. *Id*. at ¶ 3.

The Walt Disney Company has also acknowledged the potential impact of Defendants' alleged retaliation in its public filings with the Securities and Exchange Commission. I take judicial notice of these public filings, including The Walt Disney Company's disclosure in its most recent quarterly report that "[i]n Florida, steps directed at the Company (including the passage of legislation) have been taken and future actions have been threatened, which collectively could negatively impact (and may have already impacted) our ability to execute on our business strategy, our costs and the profitability of our operations in Florida." The Walt Disney Company, Quarterly Report (Form 10-Q) (May 10, 2023).

The income that Plaintiff generates from the Walt Disney World Resort in Central Florida, as well as Plaintiff's other business activities in Florida, is likely significant. While The Walt Disney Company does not disclose the income it generates specifically from the Walt Disney World Resort, The Walt Disney Company has disclosed in its most recent annual report that its "Disney Parks, Experiences and Products" segment generated $7.905 billion in operating income in

2022.[9] The Walt Disney Company, Annual Report (Form 10-K) (November 29, 2022). For context, the operating income from The Walt Disney Company's only other segment, its "Disney Media and Entertainment Distribution" segment, was $4.216 billion in 2022. *Id*. Theme park admissions, as well as park and experience merchandise, are significant sources of income for the Disney Parks, Experiences and Products segment.[10] *Id*.

It's also true that an adverse outcome for Plaintiff in these proceedings could result in Defendants continuing to engage in the alleged retaliatory conduct that, according to Plaintiff, "threatens [Plaintiff's] business operations [and] jeopardizes its economic future in the region." ECF No. 25 at ¶ 2. An adverse outcome for Plaintiff could also result in Defendants engaging in similar conduct, which could additionally impact Plaintiff. I am no speculator. But Plaintiff's own allegations make clear that this case involves significant economic interests for its parent corporation, in which my third-degree relative owns stock.

[9] The Walt Disney Company's "Disney Parks, Entertainment, and Products" segment includes more than just the Walt Disney Work Resort. The Walt Disney Company, Annual Report (Form 10-K) (November 29, 2022). This segment also includes, for example, The Walt Disney Company's other theme parks, its cruise line, and its vacation club, as well as the licensing of the Walt Disney Company's intellectual property and the sale of its branded merchandise. *Id*. I also note that operating income is just one metric used to measure the performance of a corporation and its divisions, but I find it helpful for my analysis here.

[10] The income The Walt Disney Company receives from theme park admissions, as well as park and experience merchandise, also includes income associated with other theme parks. *See* The Walt Disney Company, Annual Report (Form 10-K) (November 29, 2022).

C

Based on the language of Canon 3C(1)(d)(iii), the guidance provided by the Committee on Codes of Conduct, and the facts pertaining to this case, disqualification is required under the circumstances.

To be clear, I *do not* think it likely that the outcome of this litigation would substantially affect The Walt Disney Company's share price. Indeed, almost all of litigation involving Plaintiff is unlikely to have a substantial effect on The Walt Disney Company's share price. Plaintiff is just one slice of the vast pie that makes up The Walt Disney Company. That said, Canon 3C(1)(d)(iii) requires me to apply an ambiguous standard—with the threshold of substantially affecting the share price being somewhere between a six- and fifty-percent change—to the present case. And here, Plaintiff has alleged that Defendant's alleged retaliation has threatened its business operations, jeopardized its economic future in the region, and impacted its plan to invest billions of dollars in the region over the next decade. It is uncertain how much income The Walt Disney Company generates from Plaintiff's operation of the Walt Disney World Resort, but The Walt Disney Company's public filings reveal that its Disney Parks, Experiences and Products segment generates

considerable income for the company. Ultimately, no clear picture exists of how this case's outcome will impact—whether positively or negatively—The Walt Disney Company's share price.

Given the ambiguous standard I must apply under Canon 3C(1)(d)(iii), as well the number of unknown variables present in this case, I cannot say for sure that the outcome of these proceedings could not substantially affect the value of my family member's financial interest in The Walt Disney Company, Plaintiff's parent corporation. Even though I believe it is highly unlikely that these proceedings will have a substantial effect on The Walt Disney Company, I choose to err on the side of caution—which, here, is also the side of judicial integrity—and disqualify myself. Maintaining public trust in the judiciary is paramount, perhaps now more than ever in the history of our Republic.

III

As set out above, Defendant's motion to disqualify me is without merit. Nevertheless, based on Canon 3C(1)(d)(iii), and the guidance provided by the Committee on Codes of Conduct, and the facts of this case, I must disqualify myself, because a relative within the third degree owns stock in Plaintiff's parent corporation, which could be substantially affected by the outcome of this case. I am confident that my colleagues on this Court can preside over the remainder of this case and judge it fairly and wisely.

Accordingly,

IT IS ORDERED:

1. Defendants' motion to disqualify, ECF No. 33, is **DENIED**.
2. However, for other reasons articulated here, I disqualify myself from further participation in this case.

SO ORDERED on June 1, 2023.

s/Mark E. Walker
Chief United States District Judge

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF FLORIDA

WALT DISNEY PARKS AND RESORTS U.S., INC.,

Plaintiff,

v.

RONALD D. DESANTIS, in his official capacity as Governor of Florida; MEREDITH IVEY, in her official capacity as Acting Secretary of the Florida Department of Economic Opportunity; MARTIN GARCIA, in his official capacity as Chair and Board Member of the Central Florida Tourism Oversight District; CHARBEL BARAKAT, in his official capacity as Vice Chair and Board Member of the Central Florida Tourism Oversight District; BRIAN AUNGST, JR., in his official capacity as Board Member of the Central Florida Tourism Oversight District; RON PERI, in his official capacity as Board Member of the Central Florida Tourism Oversight District; BRIDGET ZIEGLER, in her official capacity as Board Member of the Central Florida Tourism Oversight District; and GLENTON GILZEAN, JR., in his official capacity as Administrator of the Central Florida Tourism Oversight District,

Defendants.

Case No.
4:23-cv-00163-AW-MJF

SECOND AMENDED COMPLAINT

FOR DECLARATORY AND INJUNCTIVE RELIEF

TABLE OF CONTENTS

Plaintiff Walt Disney Parks and Resorts U.S., Inc. ("Disney" or the "Company"), the owner and operator of the Walt Disney World Resort ("Walt Disney World") in Central Florida, alleges in support of its Second Amended Complaint for Declaratory and Injunctive Relief[1] as follows:

INTRODUCTION

"*[T]his all started, of course, with our parents' rights bill*."
—Governor Ronald D. DeSantis, May 5, 2023.

1. For more than half a century, Disney has made an immeasurable impact on Florida and its economy, establishing Central Florida as a top global tourist destination and attracting tens of millions of visitors to the State each year. People and families from every corner of the globe have traveled to Walt Disney World because of the unrivaled guest experience it provides and the deep emotional connection that generations of fans have with Disney's timeless stories and characters.

2. A targeted campaign of government retaliation—orchestrated at every step by Governor DeSantis as punishment for Disney's protected speech—now threatens Disney's business operations, jeopardizes its economic future in the

[1] Pursuant to Federal Rule of Civil Procedure 15(a)(2), all Defendants have provided written consent to this amendment. *See* Fed. R. Civ. P. 15(a)(2); Order Denying Without Prejudice Plaintiff's Motion to Amend, ECF No. 86 at n. 1 ("Under Federal Rule of Civil Procedure 15(a)(2), leave to amend is not required if the other parties consent to the amendment.").

region, and violates its constitutional rights.

3. The Governor and his allies have made clear they do not care and will not stop. The Governor declared that he planned "to look at things like taxes on the hotels," "tolls on the roads," "developing some of the property that the district owns" with "more amusement parks," and even putting a "state prison" next to Walt Disney World. "Who knows? I just think the possibilities are endless," he said.

4. Disney regrets that it has come to this. But having exhausted efforts to seek a resolution, the Company is left with no choice but to file this lawsuit to protect its cast members, guests, and local development partners from a relentless campaign to weaponize government power against Disney in retaliation for expressing a political viewpoint unpopular with certain State officials.

5. Disney is enormously proud of the foundational role it has played in creating Central Florida's tourism industry. The Reedy Creek Improvement District ("RCID" or the "District"), Disney's local governing jurisdiction, was integral to its success from the beginning—in 1967.

6. Fast forward five decades, and Disney today is an unparalleled engine for economic growth in the State. Among other distinctions, Disney is one of Central Florida's largest taxpayers, with more than $1.1 billion paid in state and

local taxes last year. Disney is also one of the largest employers in the State, with more than 75,000 cast members.

7. The State of Florida has flourished in the years since Walt Disney himself surveyed many acres of swampland in 1963 and dreamed the possibility of Walt Disney World. Florida's elected officials have long understood how consequential Disney is to the State's economy and future, just as Disney has sought to be a constructive, responsible, and charitable Florida resident.

8. Governor DeSantis and his allies paid no mind to the governing structure that facilitated Reedy Creek's successful development until last year, when the Governor decided to target Disney. There is no room for disagreement about what happened here: Disney expressed its opinion on state legislation and was then punished by the State for doing so.

9. Governor DeSantis announced that Disney's statement had "crossed the line"—a line evidently separating permissible speech from intolerable speech—and launched a barrage of threats against the Company in immediate response. Since then, the Governor and the State Legislature have installed the Governor's handpicked local government regulators to employ the machinery of the State in a coordinated campaign to damage Disney's ability to do business in Florida. State leaders have not been subtle about their reasons for government intervention. They have proudly declared that Disney deserves this fate because of

what Disney said. Indeed, reaffirming the unequivocal intent of his retribution campaign and trumpeting its perceived success, Governor DeSantis celebrated: "Since our skirmish last year, Disney has not been involved in any of those issues. They have not made a peep."

10. This is as clear a case of retaliation and weaponization of government as this Court is ever likely to see.

11. At the Governor's behest, the State Legislature first voted to dissolve the long-standing RCID, then ultimately voted to give near-complete control of RCID to the Governor himself. As the Florida representative who introduced the Reedy Creek dissolution bill declared to the Florida House State Affairs Committee: "You kick the hornet's nest, things come up. And I will say this: You got me on one thing, this bill does target one company. It targets The Walt Disney Company."

12. Disney has never wanted a fight with the Florida government. Disney planned to invest over $17 billion in Walt Disney World over the next decade. The Company estimated that those investments would create 13,000 new Disney jobs in that same 10-year time period. The Company therefore sought to de-escalate the matter for nearly a year, trying several times to spark a productive dialogue with the DeSantis Administration. To no avail.

13. Disney takes seriously its responsibility to shareholders, employees,

and the many residents and local businesses in Central Florida whose livelihoods depend on Walt Disney World. And Disney now is forced to defend itself against a State weaponizing its power to inflict political punishment.

14. It is a clear violation of Disney's federal First Amendment rights for the State to inflict a concerted campaign of retaliation because the Company expressed an opinion with which the government disagreed.

15. Disney finds itself in this regrettable position because it expressed a viewpoint the Governor and his allies did not like. Disney wishes that things could have been resolved a different way. But Disney also knows that it is fortunate to have the resources to take a stand against the State's retaliation—a stand smaller businesses and individuals might not be able to take when the State comes after them for expressing their own views. In America, the government cannot punish you for speaking your mind.

PARTIES

16. Walt Disney Parks and Resorts U.S., Inc. is a Florida corporation with its principal place of business in Orange County, Florida. Disney owns and operates Walt Disney World in Central Florida. Guests from around the world visit to enjoy a Disney vacation, where family members of all ages laugh, play, and learn together.

17. Defendant Ronald D. DeSantis is the Governor of Florida. Governor

DeSantis called on the Legislature to pass bills to punish Disney for its speech—among others, a bill dissolving the Reedy Creek Improvement District ("RCID" or the "District"), and another installing a Governor-selected oversight board. He signed into law Senate Bill 4C (2022) and House Bill 9B (2023) and appointed the members of the newly constituted Central Florida Tourism Oversight District ("CFTOD" or the "District") board, Disney's local regulator. Fla. Const., art. IV, § 1; Senate Bill 4-C, Fla. Laws ch. 2022-266 (amending Fla. Stat. § 189.0311) ("Senate Bill 4C"); House Bill 9-B, Fla. Laws ch. 2023-5 ("House Bill 9B"); Fla. Laws ch. 2023-5 ("CFTOD Charter") § 4(1). He is sued in his official capacity.

18. Defendant Meredith Ivey is the Acting Secretary of the Florida Department of Economic Opportunity. Acting Secretary Ivey serves as the head of the Florida Department of Economic Opportunity. Fla. Stat. § 20.60(2). The Florida Department of Economic Opportunity is authorized by statute to maintain the Official List of Special Districts, which includes all special districts in Florida. Fla. Stat. § 189.061(1)(a), (2); *see id.* § 189.012(1). The Secretary of the Florida Department of Economic Opportunity is appointed by the Governor, reports to the Governor, and serves at the pleasure of the Governor. Fla. Stat. § 20.60(2). She is sued in her official capacity.

19. Defendant Martin Garcia is a member and Chair of the Central Florida Tourism Oversight District board. The board is CFTOD's governing body, has

"controlling authority over the district," and exercises the District's statutory powers. *See* CFTOD Charter § 4(1). Chair Garcia was appointed by the Governor. *Id.* He is sued in his official capacity.

20. Defendant Charbel Barakat is a member and Vice Chair of the Central Florida Tourism Oversight District board. Barakat was appointed by the Governor. He is sued in his official capacity.

21. Defendant Brian Aungst, Jr. is a member of the Central Florida Tourism Oversight District board. Aungst was appointed by the Governor. He is sued in his official capacity.

22. Defendant Ron Peri is a member of the Central Florida Tourism Oversight District board. Peri was appointed by the Governor. He is sued in his official capacity.

23. Defendant Bridget Ziegler is a member of the Central Florida Tourism Oversight District board. Ziegler was appointed by the Governor. She is sued in her official capacity.

24. Defendant Glenton Gilzean, Jr. is the District Administrator of the Central Florida Tourism Oversight District. The CFTOD board appoints the District Administrator and can remove him by vote at any time. *See* CFTOD Charter § 4(6)(b). The District Administrator is "in charge of the day-to-day operations of the district subject to the board of supervisor's direction and policy

decisions." *Id.* He is sued in his official capacity.

JURISDICTION AND VENUE

25. This Court has subject-matter jurisdiction under 28 U.S.C. §§ 1331 and 1343 because this action arises under the United States Constitution and federal law.

26. This Court has authority to grant relief under the Declaratory Judgment Act, 28 U.S.C. §§ 2201, 2202, and 28 U.S.C. § 1343(a) and 42 U.S.C. § 1983.

27. In addition, this Court has authority to issue injunctive relief under the All Writs Act, 28 U.S.C. § 1651.

28. This Court's jurisdiction is properly exercised over Defendants in their official capacities, as Disney is seeking declaratory and injunctive relief only. *Ex parte Young*, 209 U.S. 123 (1908).

29. This Court has personal jurisdiction over Defendants, and venue is proper in this District pursuant to 28 U.S.C. § 1391, because a substantial part of the events giving rise to this claim occurred in this District.

30. There is an actual and justiciable controversy between Disney and Defendants, of sufficient immediacy and concreteness relating to the parties' legal rights and duties to warrant relief under 42 U.S.C. § 1983 and 28 U.S.C. §§ 2201 and 2202, because Senate Bill 4C and House Bill 9B constitute a present and

continuing infringement of Disney's constitutional rights.

FACTUAL BACKGROUND

A. THE REEDY CREEK IMPROVEMENT DISTRICT HAS BENEFITED FLORIDA AND ITS RESIDENTS FOR DECADES

31. In 1963, Walt Disney looked down on acres of undeveloped Central Florida land from an airplane seat and saw potential. Disney quickly acquired title or options for over 27,000 acres of land, comprising roughly 43 square miles in Central Florida.

32. In 1966, the State created the Reedy Creek Drainage District, which allowed Disney, the largest landowner, to begin the effort of draining and reclaiming land so that actual site construction would be possible. The following year, the Florida Legislature expanded the scope of the district's authority, establishing the Reedy Creek Improvement District. *See* Fla. Laws ch. 67-764 ("Reedy Creek Enabling Act").

33. In the Reedy Creek Enabling Act, the Legislature recognized that "the economic progress and well-being of the people of Florida depend in large measure upon the many visitors and new residents who come to Florida," Reedy Creek Enabling Act at 4, and, to that end, the Legislature granted RCID powers, functions, and authorities necessary to foster "a recreation-oriented community" that would "enable enterprises" to "undertake" "a broad and flexible program of experimentation and development." *Id.* at 5. RCID was tasked with "provid[ing]

for the reclamation, drainage and irrigation of land," "water and sewer systems and waste collection and disposal facilities," "public transportation and public utilities," and "streets, roads, [and] bridges." *Id.* The Legislature determined that the purposes of the act could not "be realized except through a special taxing district having the[se] powers." *Id.* at 6.

34. In 1968, the State of Florida challenged RCID's power to issue drainage bonds. *See State v. Reedy Creek Improvement Dist.*, 216 So. 2d 202 (Fla. 1968). The State argued that, because Disney was the largest landowner in RCID, the water control improvements funded by the bonds would impermissibly put public funds to a private purpose. *Id.* at 205. The Florida Supreme Court rejected the challenge, finding that RCID served a *public* purpose. In particular, it concluded that the purpose of RCID was "essentially and primarily directed toward encouraging and developing tourism and recreation for the benefit of citizens of the state and visitors to the state generally." *Id.* at 205-206.

35. The Florida Supreme Court also confirmed that the Legislature had properly established RCID, explaining that "the Legislature in the exercise of its plenary authority may create a special improvement district encompassing more than one county and possessing multi-purpose powers essential to the realization of a valid public purpose." *Id.* at 206. The Court further emphasized that while RCID's powers over land use and economic development were broad, they were

not "commensurate in scope with those characteristic of a local municipal government" and were not "a mere subterfuge to avoid the creation of a municipality." *Id.* at 206.

36. In the decades that followed, RCID has played a critical role in providing vital services for tourism in Central Florida. RCID enforces building codes, provides emergency services, and offers utilities—subject to the oversight of state and federal regulators. Under state law, special district board meetings are open to the public and districts provide reasonable notice of and produce minutes of each meeting; these records are open for public inspection. *See* Fla. Stat. § 286.011(1), (2). In a 2004 report, Florida's Office of Program Policy Analysis & Government Accountability concluded that RCID was meeting "the public purpose expressed in its special act[.]"[2]

37. Today, the area formerly governed by RCID (now governed by CFTOD) encompasses approximately 25,000 acres of land and covers portions of Orange and Osceola Counties. The District employs hundreds of employees responsible for stewarding the land consistent with environmental regulations and public safety. The District has built 134 miles of roadways and 67 miles of

[2] OFF. PROG. POL'Y ANALYSIS & GOV'T ACCOUNTABILITY, CENTRAL FLORIDA'S REEDY CREEK IMPROVEMENT DISTRICT HAS WIDE-RANGING AUTHORITY 9, Report No. 04-81 (Dec. 2004), https://oppaga.fl.gov/Documents/Reports/04-81.pdf.

waterways. It has managed 60,000 tons of waste. It recycles 30 tons of aluminum, paper, steel cans, cardboard, and plastic containers every year. It uses thousands of vendors, suppliers, and contractors to provide a high level of public services for visitors.

38. Disney is the primary landowner in the District and, as a result, is its largest taxpayer. For the 2022 fiscal year, Disney-owned land constituted 87.7% of the total taxable assessed value within the District.[3]

39. Like many other special districts in Florida, RCID board members were, until recently, elected on the basis of property ownership within the District. As RCID's largest landowner and taxpayer, Disney naturally had substantial input into RCID's acquisition of property, development of transportation facilities, operation of public utilities, and issuance of revenue bonds, among other things. Disney, since the beginning, was the primary contributor to the unprecedented success of RCID's development objectives.

B. DISNEY PUBLICLY COMMENTS ON HOUSE BILL 1557

40. The Florida Legislature passed the Parental Rights in Education Act ("House Bill 1557") in March 2022.[4]

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[3] REEDY CREEK IMPROVEMENT DISTRICT, ANNUAL FINANCIAL REPORT 51 (Feb. 7, 2022), https://www.rcid.org/document/2021-rcid-annual-financial-report.

[4] Committee Substitute for House Bill 1557 (2022), Fla. Laws ch. 2022-22 (amending Fla. Stat. § 1001.42).

41. The public discussion before and after the bill's passage was robust not only in Florida, but across the country. Commentary came from all corners, including "leaders of global corporations" and "editorial boards of major newspapers."[5]

42. As a Florida corporation and taxpayer with tens of thousands of Florida-based employees, Disney took an interest in the bill. On March 9, the then-CEO of Disney's parent company, The Walt Disney Company, called Governor DeSantis personally to express the Company's concern.

43. Governor DeSantis recounts thinking that "it was a mistake for Disney to get involved" and telling Disney's then-CEO, "'You shouldn't get involved[;] it's not going to work out well for you.'"[6]

44. On March 10, Governor DeSantis's campaign sent an email accusing "Woke Disney" of "echoing Democrat propaganda."[7]

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[5] Matt Lavietes, *Here's What Florida's 'Don't Say Gay' Bill Would Do and What It Wouldn't Do*, NBC NEWS (Mar. 16, 2022), https://www.nbcnews.com/nbc-out/out-politics-and-policy/floridas-dont-say-gay-bill-actually-says-rcna19929.

[6] Kimberly Leonard, *Florida Gov. Ron DeSantis Said He Warned Disney Not to Get Involved in Schools Debate: 'It's Not Going to Work Out Well for You,'* BUSINESS INSIDER (June 8, 2022), https://www.businessinsider.com/desantis-says-he-told-disney-to-stay-out-of-dont-say-gay-fight-2022-6.

[7] Cortney Drakeford, *'Woke Disney' Trends After Gov. Ron DeSantis Attacks Company for Freezing Campaign Donations*, INT'L BUS. TIMES (Mar. 12, 2022), https://www.ibtimes.com/woke-disney-trends-after-gov-ron-desantis-attacks-company-freezing-campaign-donations-3435110.

45. Walt Disney World issued the following statement shortly thereafter: "To ALL who come to this happy place, welcome. Disney Parks, Experiences and Products is committed to creating experiences that support family values for every family, and will not stand for discrimination in any form. We oppose any legislation that infringes on basic human rights, and stand in solidarity and support our LGBTQIA+ Cast, Crew, and Imagineers and fans who make their voices heard today and every day."[8]

46. Governor DeSantis signed House Bill 1557 into law on March 28. That day, The Walt Disney Company issued a statement expressing its views that the legislation "never should have been signed into law," that its "goal as a company is for this law to be repealed by the [L]egislature or struck down in the courts," and that The Walt Disney Company "remains committed to supporting the national and state organizations working to achieve that."[9]

47. On March 29, Governor DeSantis said that he thought The Walt Disney Company's March 28 statement had "crossed the line" and pledged "to

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[8] Andrew Krietz, *Disney Releases Statement As DeSantis Prepares To Sign Bill Limiting Teachings About Sexual Orientation, Gender*, WTSP (Mar. 22, 2022), https://www.wtsp.com/article/news/politics/disney-florida-desantis-statement-bill/67-170f27d3-eee4-4fb1-ab70-01c73828834a.

[9] Press Release, The Walt Disney Company, Statement From The Walt Disney Company on Signing of Florida Legislation (Mar. 11, 2022), https://thewaltdisneycompany.com/statement-from-the-walt-disney-company-on-signing-of-florida-legislation/.

make sure we're fighting back" in response to Disney's protected speech.[10]

48. Governor DeSantis's memoir attacked Disney's speech and petitioning activity for expressing the wrong viewpoint. "In promising to work to repeal the bill," he asserted, "the company was pledging a frontal assault on a duly enacted law of the State of Florida." As a consequence of its disfavored speech and petitioning, he declared, "[t]hings got worse for Disney."[11]

49. The Governor promptly began his campaign of punishment.

C. GOVERNOR DESANTIS AND THE LEGISLATURE DISSOLVE THE REEDY CREEK IMPROVEMENT DISTRICT

50. On March 30, State Representative Spencer Roach disclosed for the first time that the Legislature was considering dissolving RCID and announced, "If Disney wants to embrace woke ideology, it seems fitting that they should be regulated by Orange County."[12] Governor DeSantis had been orchestrating the move behind the scenes. As he recounts it in his memoir, "I needed to be sure that the Legislature would be willing to tackle the potentially thorny issue involving the

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[10] David Kihara, *DeSantis Says Disney 'Crossed the Line' in Calling for 'Don't Say Gay' Repeal*, POLITICO (Mar. 29, 2022), https://www.politico.com/news/2022/03/29/desantis-disney-dont-say-gay-repeal-00021389.

[11] Ron DeSantis, THE COURAGE TO BE FREE, ch. 12 (2023).

[12] Fatma Khaled, *Disney at Risk of Losing Its Own Government in Florida*, NEWSWEEK (Apr. 1, 2022), https://www.newsweek.com/disney-risk-losing-its-own-government-florida-1693955.

state's most powerful company. I asked the House Speaker, Chris Sprowls, if he would be willing to do it, and Chris was interested. 'OK, here's the deal,' I told him. 'We need to work on this in a very tight circle, and there can be no leaks. We need the element of surprise—nobody can see this coming.'"[13]

51. On March 31, Governor DeSantis quickly affirmed Representative Roach's statement, saying publicly, "[W]e're certainly not going to bend a knee to woke executives in California. That is not the way the state's going to be run."[14]

52. On April 19, Governor DeSantis suddenly called for the Legislature to expand a special session that had been scheduled to address redistricting. The new purpose of the session was to attack Disney by targeting just the handful of Florida's more than one thousand independent special districts that were created before the passage of the 1968 Florida Constitution, like RCID.[15]

53. Governor DeSantis conjured other rationales for the bill, including to "ensure that [independent special districts] are appropriately serving the public interest" and to "consider whether such independent special districts should be

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13 DeSantis, THE COURAGE TO BE FREE, *supra* note 10, ch. 12.

14 Brandon Hogan, *Florida Gov. DeSantis Discusses Potential for Repeal of Disney's Reedy Creek Act*, CLICKORLANDO (Mar. 31, 2022), https://www.clickorlando.com/news/local/2022/03/31/florida-gov-desantis-discusses-potential-of-repeal-of-disneys-reedy-creek-act.

15 *See* Proclamation, Governor Ron DeSantis (Apr. 19, 2022), https://www.flgov.com/wp-content/uploads/2022/04/Proclamation.pdf.

subject to the special law requirements of the Florida Constitution of 1968" that "prohibit[] special laws granting privileges to private corporations."

54. These rationales did not make sense. Only six independent special districts that were created before 1968 had not been reconstituted in the intervening years. Of those, RCID was the only district closely connected to a specific corporation. And, in Governor DeSantis's memoir, he admitted that he "found" that there was this "handful of other districts" that "also deserved scrutiny" only *after* his "staff worked with the legislative staff in the House" to target Disney.[16]

55. When considered against the substance of the legislation, the pretext became especially transparent. The bill did nothing either to "ensure that [independent special districts] are appropriately serving the public interest" or "consider whether such independent special districts should be subject to the special law requirements of the Florida Constitution of 1968" that "prohibit[] special laws granting privileges to private corporations." Instead, under the bill, districts created before 1968 were preemptively scheduled for dissolution *before* the Legislature undertook any analysis to determine whether the districts were serving the public interest, and before any determination as to whether they were subject to the special law requirements of the 1968 Florida Constitution at all. Had the Legislature undertaken that analysis, it would necessarily have found that

[16] DeSantis, THE COURAGE TO BE FREE, *supra* note 10, ch. 12.

RCID served the public interest, as the Florida Supreme Court had already confirmed, *see Reedy Creek Improvement Dist.*, 216 So. 2d at 205-206, and further that RCID was not subject to the 1968 Florida Constitution's prohibition on special privileges granted to private corporations, *see id.* (rejecting as "untenable" the claim that the Reedy Creek Enabling Act's provisions were "oriented to serve primarily the benefit of that particular private enterprise").

56. On April 20, Governor DeSantis sent a fundraising email warning that "Disney and other woke corporations won't get away with peddling their unchecked pressure campaigns any longer" and that he would "not allow a woke corporation based in California to run our state[.]"[17]

57. The campaign against Disney raced forward. The very same morning that Governor DeSantis issued his proclamation expanding the special session, identical bills were introduced in the Florida House and Senate providing for the dissolution of RCID. Florida House Bill 3C and Florida Senate Bill 4C each provided that "any independent special district established by a special act prior to the date of ratification of the Florida Constitution on November 5, 1968, and which

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[17] A.G. Gancarski, *Ron DeSantis Dunks on Disney in Donor Pitch*, FLORIDA POLITICS (Apr. 20, 2022), https://floridapolitics.com/archives/517962-ron-desantis-dunks-on-disney-in-donor-pitch; *Florida's Governor Has Signed a Bill To Strip Disney World's Self-Government. Here's What That Means*, ASSOCIATED PRESS (Apr. 22, 2022), https://www.kcra.com/article/disney-world-self-government-explained/39786585.

was not reestablished, re-ratified, or otherwise reconstituted by a special act or general law after November 5, 1968, is dissolved effective June 1, 2023."[18]

58. House sponsor Representative Randy Fine immediately announced: "Disney is a guest in Florida. Today we remind them. @GovDeSantis just expanded the Special Session so I could file HB3C which eliminates Reedy Creek Improvement District, a 50 yr-old special statute that makes Disney to [sic] exempt from laws faced by regular Floridians."[19]

59. That same day, Representative Fine said to the Florida House State Affairs Committee: "You kick the hornet's nest, things come up. And I will say this: You got me on one thing, this bill does target one company. It targets The Walt Disney Company."[20]

60. Governor DeSantis's memoir describes the attack on Disney with pride: "Nobody saw it coming, and Disney did not have enough time to put its

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[18] Senate Bill 6C, a bill removing an exemption for theme parks from a state law governing social media platforms, was introduced that same day and quickly passed in both chambers. Jennifer Kay, *DeSantis Set to Sign Bill Closing Disney Loophole in Tech Law*, BLOOMBERG LAW (Apr. 21, 2022), https://news.bloomberglaw.com/us-law-week/desantis-set-to-sign-bill-closing-disney-loophole-in-tech-law.

[19] Rep. Randy Fine (@VoteRandyFine), TWITTER (Apr. 19, 2022, 10:04 AM), https://twitter.com/VoteRandyFine/status/1516417533825454083.

[20] Hearing on HB 3C Before the Fla. H.R. State Affairs Comm., Special Session 2022C (Apr. 19, 2022) (remarks by Representative Randy Fine, sponsor of HB 3C, companion bill to SB 4C, starting at 1:13:00), https://www.myfloridahouse.gov/VideoPlayer.aspx?eventID=8085.

army of high-powered lobbyists to work to try to derail the bill. That the Legislature agreed to take it up would have been unthinkable just a few months before. Disney had clearly crossed a line in its support of indoctrinating very young schoolchildren in woke gender identity politics."[21]

61. The legislative process for Senate Bill 4C was highly unusual. When in the past the Florida Legislature had dissolved a special district, the bills enacting the dissolution typically specified the plan for governance and management of district assets and obligations, including bond debt, after dissolution. *See, e.g.*, Community & Military Affairs Subcommittee Bill Analysis, House Bill 4191, Fla. Leg. (2011) (describing earlier legislation that dissolved South Lake Worth Inlet District, transferred all property, assets, and debt to Palm Beach County and clarified Palm Beach's rights and responsibilities as part of the transfer, and required Palm Beach to establish an advisory committee to advise County Commissioners on management of district's former territory); Atty. Gen'l Op. 97-68 (Fla. A.G. Sept. 25, 1997), 1997 WL 592,445 (referring to special acts Chapter 91-346 and Chapter 94-429, which collectively dissolved the Port Everglades Authority special district and transferred its operations and property to Broward County).

62. Senate Bill 4C, in stark contrast, described no plan for the disposition

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[21] DeSantis, THE COURAGE TO BE FREE, *supra* note 10, ch. 12.

of RCID's assets, operations, or obligations. Nor did the bill address how RCID's roughly $1 billion in municipal bond debt would be satisfied.[22]

63. The legislative analysis accompanying the bill was cursory[23] and provided no estimate of the full economic impact of dissolving RCID. The analysis identified no constitutional issues raised by the legislation. *See* Committee on Community Affairs Bill Analysis, Senate Bill 4C, Fla. Leg. (2022).

64. On April 20, the Senate passed Senate Bill 4C. The House followed suit, without legislative findings or a statement of purpose, the very next day, in a session without debate that lasted under five minutes.[24] Orange and Osceola Counties did not have time to conduct their own analyses.[25]

65. After the vote, Senator Joe Gruters said, "Disney is learning lessons

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[22] Danielle Moran, *Barclays Says to Buy Disney District Munis Amid DeSantis Feud*, BLOOMBERG (May 6, 2022), https://www.bloomberg.com/news/articles/2022-05-06/barclays-says-to-buy-disney-district-munis-amid-desantis-feud.

[23] Lori Rozsa et al., *Florida Legislature Passes Bill Repealing Disney Special Tax Status*, WASH. POST (Apr. 21, 2022), https://www.washingtonpost.com/nation/2022/04/21/florida-legislature-passes-bill-repealing-disneys-special-tax-status.

[24] Scott Powers, *Disney Government Dissolution Bill Approved Amid Chaos in House*, FLORIDA POLITICS (Apr. 21, 2022), https://floridapolitics.com/archives/518222-disney-government-dissolution-bill-approved-amid-chaos-in-house; Andrew Atterbury, *Florida Lawmakers Vote to Dismantle Disney's Special Privileges over 'Don't Say Gay'*, POLITICO (Apr. 21, 2022), https://www.politico.com/news/2022/04/21/florida-lawmakers-vote-to-dismantle-disneys-special-privileges-over-dont-say-gay-00026954.

[25] Rozsa et al., *supra* note 22.

and paying the political price of jumping out there on an issue."[26] The House bill's sponsor, Representative Fine, proudly confirmed that the Legislature had "looked at special districts" only because "Disney kicked the hornet's nest" by expressing a disfavored political viewpoint. "What changed," he said, was "bringing California values to Florida."[27] Christina Pushaw, then Governor DeSantis's press secretary, warned corporations that might consider expressing disfavored viewpoints, "Go woke, go broke."[28]

66. On April 22, Governor DeSantis signed both Senate Bill 4C and Senate Bill 6C. At the signing ceremony, he said, "For whatever reason, Disney got on that bandwagon. They demagogued the bill. They lied about it. … Do you know what my view is? I was very clear about saying 'You ain't influencing me. I'm standing strong right here.' … We signed the bill. And then, and incredibly, they say, 'We are going to work to repeal Parents' Rights in Florida.' And I'm just

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[26] Jacob Ogles, *Joe Gruters, Despite Special Session Votes, Still Sees a Beautiful Tomorrow with Disney*, FLORIDA POLITICS (Apr. 22, 2022), https://floridapolitics.com/archives/518669-joe-gruters-despite-special-session-votes-still-sees-a-beautiful-tomorrow-with-disney.

[27] Sarah Whitten, *Florida Republicans Vote to Dissolve Disney's Special District, Eliminating Privileges and Setting up a Legal Battle*, CNBC (Apr. 21, 2022), https://www.cnbc.com/2022/04/21/florida-set-to-dissolve-disneys-reedy-creek-special-district.html.

[28] Christina Pushaw (@ChristinaPushaw), Twitter (Apr. 21, 2022, 5:31 PM), https://twitter.com/ChristinaPushaw/status/1517254737401458690; Rozsa et al., *supra* note 22.

thinking to myself, 'You're a corporation based in Burbank, California, and you're going to marshal your economic might to attack the parents of my state?' We view that as a provocation and we are going to fight back against that."[29]

67. Because the legislation was hastily enacted with no analysis or plan for disposition of RCID's assets or obligations—let alone daily operations—markets, constituencies, and RCID employees were concerned.

68. The same day the bill was signed, credit-rating agency Fitch Ratings placed RCID's approximately $1 billion in outstanding bond debt on "rating watch negative" based on "the lack of clarity regarding the allocation" of RCID's assets and liabilities.[30]

69. Speculation spread that Orange and Osceola Counties would absorb RCID's expenses and debts. Orange County Tax Collector Scott Randolph predicted that Orange County would be saddled with RCID's obligations "the minute that Reedy Creek is dissolved," resulting in a property tax increase of 20-25%.[31] Senator Linda Stewart addressed this possibility: "Turning it over to

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[29] Governor Ron DeSantis, Remarks at Signing Ceremony for Senate Bill 4C (Apr. 22, 2022) (transcript available at https://www.rev.com/blog/transcripts/gov-desantis-holds-news-conference-in-south-florida-4-22-22-transcript).

[30] Dara Kim, *Credit Agency Places 'Rating Watch Negative' On Disney Debt*, MIAMI HERALD (Apr. 23, 2022), https://www.miamiherald.com/news/politics-government/state-politics/article260684352.html.

[31] Eric Levenson & Steve Contorno, *Ron DeSantis Says Ending Disney's Self-*

Orange County and Osceola County would create the largest property tax increase in our history. We don't want that to happen. Our residents do not want this to happen … This has not been well-thought-out."[32] At the same press conference, Senator Randolph Bracy called the plan "hare-brained" and "irresponsible," while Senator Victor Torres criticized Governor DeSantis for "bragging about raising taxes on one of the largest private companies in the state and saying government has a right to punish companies for their private business decisions."[33]

70. On May 16, residents and taxpayers in Osceola County filed a lawsuit against Governor DeSantis, alleging that the dissolution of Reedy Creek would lead to $1 to $2 billion in increased taxes for residents of Central Florida. *See* Complaint, *Foronda v. DeSantis*, No. 2022-009114-CA-01 (Fla. Cir. Ct. May 16, 2022).

71. Despite the chaos, the legislation's biggest boosters doubled down on their support. The House sponsor, Representative Fine, criticized Disney for

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Governing Status Will be a 'Process.' Here's What Might Happen Next, CNN (Apr. 27, 2022), https://www.cnn.com/2022/04/27/us/reedy-creek-disney-whats-next/index.html.

[32] *Central Florida Leaders Say Dissolving Reedy Creek Irresponsible, Not Well-Thought-Out*, WESH (May 3, 2022), https://www.wesh.com/article/dissolution-reedy-creek-improvement-district/39875725#.

[33] Senator Linda Stewart, *Press Conference on Dissolution of Reedy Creek Improvement District with Senator Stewart, Senator Bracy, and Senator Torres*, FACEBOOK (May 2, 2022), https://www.facebook.com/SenatorLindaStewart/videos/1379985162424883.

taking a position on House Bill 1557 and warned that the Company, and others like it, are "now learning in Florida, there's a cost to doing that."[34]

72. In a June 6 interview, Governor DeSantis recalled that he had warned Disney not to participate in the public debate: "I though[t] it was a mistake for Disney to get involved and I told them, 'You shouldn't get involved[;] it's not going to work out well for you.'"[35] Governor DeSantis said that he believed it was his role "as a leader" to "make sure people understand that [Disney] do[es] not run the state of Florida," adding that, "We're not going to have our leadership subcontracted out to a corporation with close ties to the [Chinese Communist Party] and that's based in Burbank, California."[36]

73. During a September 15, 2022 speech, Governor DeSantis said of Senate Bill 4C: "We took action" after Disney made "the mistake" of opposing the legislation.[37]

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[34] Zach Weissmueller & Danielle Thompson, *The Death of Walt Disney's Private Dream City?*, REASON (June 1, 2022), https://reason.com/video/2022/06/01/the-death-of-walt-disneys-private-dream-city/.

[35] *See* Leonard, *supra* note 5.

[36] Jeremiah Poff, *DeSantis Blasts Disney's 'Stupid Activism' In Defiant Defense of Florida Parental Rights Law*, WASH. EXAMINER (July 15, 2022), https://www.washingtonexaminer.com/restoring-america/community-family/desantis-blasts-disneys-stupid-activism-in-defiant-defense-of-florida-parental-rights-law.

[37] American Firebrand (@AmFirebrand), TWITTER (Sept. 15, 2022, 12:55 PM), https://twitter.com/FirebrandPAC/status/1570456289649508352 (remarks by

74. For months, no plan for implementing Senate Bill 4C was released. As late as mid-September 2022, Governor DeSantis's press secretary told reporters, "We don't have an announcement to make at the moment [about RCID] but stay tuned."[38]

75. Absent any plan addressing the scheduled dissolution of RCID, Disney and other stakeholders were left to guess at how Governor DeSantis and the Legislature might address the fallout. Florida Division of Bond Finance Director J. Ben Watkins III speculated about "a successor district."[39] But as of September 2022, high-ranking legislator Representative Daniel Perez admitted that the "timeline" for reaching a "solution" for RCID was "still uncertain."[40]

76. The months-long failure to propose a plan for the dissolution of RCID threatened Disney's operations, investments, and development plans. It also underscored the irregular process by which Governor DeSantis and the Legislature had voted to abolish the District.

Governor DeSantis at National Conservatism Conference).

[38] Forrest Saunders, *GOP Lawmakers Expect 'Solution' for Disney's Reedy Creek District Soon*, WPTV (Sept. 13, 2022), https://www.wptv.com/news/political/gop-lawmakers-expect-solution-for-disneys-reedy-creek-district-soon.

[39] Danielle Moran, *Florida's Bond Chief Sees Disney District Being Re-Established*, BLOOMBERG (July 22, 2022), https://www.bloomberg.com/news/articles/2022-07-22/florida-s-bond-chief-sees-disney-district-being-re-established.

[40] Saunders, *supra* note 37.

D. GOVERNOR DESANTIS AND THE LEGISLATURE RECONSTITUTE AND SEIZE CONTROL OF THE DISTRICT

77. In early October 2022, reports emerged that Governor DeSantis finally had developed a plan to seize control of Disney's governing body. The Director of the Florida Division of Bond Finance revealed that Governor DeSantis would install "state appointees" on RCID's board.[41] To accomplish this, Governor DeSantis would have the Legislature "create a successor agency" that would "function essentially unchanged" from the original RCID—except that the new district would operate under the Governor's thumb, "cementing a political win for the governor."[42]

78. Three months later, Governor DeSantis posted a notice to the Osceola County website indicating his "intent to seek legislation before the Florida Legislature" doing just that.[43]

79. In a statement after the notice was published, the Governor's Communications Director confirmed that the new district's board would be "state-

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41 Gene Maddaus, *After 'Don't Say Gay,' a Weakened Disney Hopes to Limit the Damage*, VARIETY (Oct. 5, 2022), https://variety.com/2022/film/news/disney-desantis-reedy-creek-dont-say-gay-1235392328.

42 *Id.*

43 *Florida Governor Ron DeSantis Reveals Plans for Reedy Creek Replacement*, DAPS MAGIC (Jan. 7, 2023), https://dapsmagic.com/2023/01/florida-governor-ron-desantis-reveals-plans-for-reedy-creek-replacement/ (last accessed August 28, 2023).

controlled" and heralded: "The corporate kingdom has come to an end."[44]

80. On January 31, 2023, a spokesperson for the Governor's Office announced that the Governor expected a special session of the Legislature the following week "on Reedy Creek and other items."[45]

81. Right on cue, just days later, the Florida Legislature convened a special session to introduce House Bill 9B.

82. House Bill 9B was every bit the takeover that Governor DeSantis promised. Section 2 of the bill reenacted RCID's charter but made key changes to consolidate power in the Governor. Historically, the District had been governed by a board of supervisors that "exercise[d] the powers granted to the district."[46] Under RCID's charter, board members were chosen through an election in which all landowners in the District were allotted one vote per acre of land owned in the District.[47] This structure—common in special districts for economic development throughout Florida—was no secret and was in place when Florida's Supreme Court

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44 Richard Bilbao, *Breaking: 'State-Controlled Board' Envisioned to Replace Disney's Reedy Creek*, ORLANDO BUS. J. (Jan. 6, 2023), https://bizjournals.com/orlando/news/2023/01/06/breaking-disney-reedy-creek-desantis-florida.html.

45 Jeffrey Schweers, *Governor 'Anticipates' Special Session on Disney's Reedy Creek Next Week*, ORLANDO SENTINEL (Feb. 1, 2023), https://www.orlandosentinel.com/politics/os-ne-desantis-reedy-creek-special-session-20230201-pqtn2xz6wzf6bj5q6oz4s35u6y-story.html.

46 Reedy Creek Enabling Act § 4(1).

47 *Id.* § 4(5).

long ago confirmed that RCID served a public purpose. *See Reedy Creek Improvement Dist.*, 216 So. 2d at 205-206.

83. House Bill 9B replaced that landowner-election process with a board handpicked by the Governor, subject to confirmation by the Florida Senate.[48] Once selected, board members could serve for up to 12 years.[49] The bill excluded from board service any person who, in the last three years, had worked for any organization that owns a "theme park or entertainment complex" with at least one million annual visitors.[50] It also excluded any person with a relative who had done the same.[51]

84. House Bill 9B prevented the District's dissolution, which had been set to occur on June 1, 2023 under Senate Bill 4C. It reaffirmed the District's continued existence under a new name, however: the Central Florida Tourism Oversight District.[52]

85. House Bill 9B, like Senate Bill 4C, was a law designed to target Disney and Disney alone. It shifted the power to select the District's board from the District's landowners, including its majority landowner, Disney, to the

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48 CFTOD Charter § 4(1).

49 *Id.*

50 *Id.* § 4(2) (citing Fla. Stat. § 509.013(9)).

51 *Id.*

52 CFTOD Charter §1; House Bill 9B §7.

Governor—to enable him to punish Disney for its protected speech about House Bill 1557. In comments to reporters on February 8, 2023, Governor DeSantis said of House Bill 9B: "There's a new sheriff in town and that's just the way it's going to be."[53]

86. The Legislature passed House Bill 9B within days of its special-session introduction.[54]

87. During the Florida Senate's February 10 floor session, Senator Doug Broxson underscored what was plain from the start: House Bill 9B was bare retaliation for Disney's failure to be "apolitical."[55] Senator Broxson was explicit about the bill's retaliatory intent: "We joined with the Governor in saying it was Disney's decision to go from an apolitical, safe 25,000 acres, and try to be involved in public policy. … We're saying 'you have changed the terms of our agreement, therefore we will put some authority around what you do.' And I gladly join the Governor in doing that."[56]

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53 Julia Musto, *DeSantis vs. Disney: Florida Governor Declares 'There's a New Sheriff in Town'*, FOX BUSINESS (Feb. 8, 2023), https://www.foxbusiness.com/lifestyle/desantis-disney-florida-governor-new-sheriff-town.

54 Bill History of House Bill 9B (2023), *available at* https://www.flsenate.gov/Session/Bill/2023B/9B/?Tab=BillHistory (last accessed August 28, 2023).

55 Fla. Senate Floor Proceedings, Special Session 2023B (Feb. 10, 2023) (remarks by Senator Doug Broxson, starting at 1:05:00), https://www.flsenate.gov/Media/VideoPlayer?EventId=1_nty0d3lq-202302101200.

56 *Id.*

88. On February 27, Governor DeSantis signed House Bill 9B into law. In a related news release, the Governor praised the legislation for ending the "corporate kingdom of Walt Disney World" and "placing the district into state receivership."[57]

89. The very next day, Governor DeSantis published his book titled *The Courage to Be Free: Florida's Blueprint for America's Revival*. To kick off the book's press tour, Governor DeSantis authored an opinion piece in The Wall Street Journal that explicitly connected House Bill 9B to Disney's speech about House Bill 1557. Criticizing what he called "left-wing activists working at [Disney's] headquarters in Burbank," Governor DeSantis focused on Disney's opposition to Florida's House Bill 1557 and said: "When corporations try to use their economic power to advance a woke agenda, they become political, and not merely economic, actors. In such an environment, reflexively deferring to big business effectively surrenders the political battlefield to the militant left. … Leaders must stand up and fight back when big corporations make the mistake, as Disney did, of using their economic might to advance a political agenda. We are making Florida the

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[57] Press Release, Governor Ron DeSantis, *Governor Ron DeSantis Signs Legislation Ending the Corporate Kingdom of Walt Disney World* (Feb. 27, 2023), https://www.flgov.com/2023/02/27/governor-ron-desantis-signs-legislation-ending-the-corporate-kingdom-of-walt-disney-world; Attachment to Press Release, Governor Ron DeSantis, *Dissolving the Corporate Kingdom* (Feb. 2023), https://www.flgov.com/wp-content/uploads/2023/02/Dissolving-the-Corporate-Kingdom.pdf ("More on HB 9-B can be found here.").

state where the economy flourishes because we are the state where woke goes to die."[58]

90. Indeed, Governor DeSantis has reaffirmed, again and again, that the State campaign to punish Disney for its speech about House Bill 1557 has been a coordinated and deliberate one from the start. Disney's commentary on House Bill 1557 was, he claimed, a "declaration of war" and "a textbook example of when a corporation should stay out of politics."[59]

91. Despite the State's escalating retaliation, Disney sought de-escalation, including through several attempts to spark a productive dialogue with the DeSantis Administration.

92. It was to no avail. The threatening political action and rhetoric continued—and escalated further.

E. GOVERNOR DESANTIS REPLACES ELECTED RCID BOARD MEMBERS WITH CFTOD POLITICAL APPOINTEES WHO EXECUTE THE RETRIBUTION CAMPAIGN

93. On February 27, 2023, the date Governor DeSantis signed House Bill 9B into law, Governor DeSantis announced the names of the five individuals he

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58 Ron DeSantis, *Why I Stood Up to Disney: Old-fashioned Corporate Republicanism Won't Do in a World Where the Left Has Hijacked Big Business*, WALL ST. J. (Mar. 1, 2023), https://www.wsj.com/articles/why-i-stood-up-to-disney-florida-woke-corporatism-seaworld-universal-esg-parents-choice-education-defa2506.

59 DeSantis, THE COURAGE TO BE FREE, *supra* note 10, ch. 12.

had selected to replace the elected members of the board.[60]

94. When Governor DeSantis addressed what he was "looking for with this board," he described, with a thinly veiled euphemism, staffing the board with people who would censor Disney's speech and discipline the Company.[61] As Governor DeSantis put it, referring to Disney, "When you lose your way, you've got to have people that are going to tell you the truth … So we hope they can get back on."[62]

95. Governor DeSantis also posited that the new board could stop Disney from "trying to inject woke ideology" into children.[63] As Governor DeSantis put

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60 Press Release, Governor Ron DeSantis, *Governor Ron DeSantis Appoints Five to the Central Florida Tourism Oversight District* (Feb. 27, 2023), https://www.flgov.com/2023/02/27/governor-ron-desantis-appoints-five-to-the-central-florida-tourism-oversight-district.

61 WKMG News 6, *DeSantis Holds News Conference at Reedy Creek Fire Station*, YOUTUBE (Feb. 27, 2023), https://www.youtube.com/live/1FJR-dumaFY?t=2531 (last accessed August 28, 2023).

62 Ewan Palmer, *Ron DeSantis Makes Ominous Warning About Disney's Future Creative Control*, NEWSWEEK (Feb. 28, 2023), https://www.newsweek.com/ron-desantis-disney-board-florida-reedy-creek-1784261.

63 Jonathan Chait, *DeSantis Promises Florida Will Control Disney's Content: Right-Wing Board to Clamp Down on "Woke Ideology" in Cartoons*, NEW YORK MAG. (Mar. 1, 2023), https://nymag.com/intelligencer/2023/03/desantis-promises-florida-will-control-disney-content.html.

it, "I think all of these board members very much would like to see the type of entertainment that all families can appreciate."[64]

96. The new members of the board sat for their first meeting on March 8, 2023 and have since continued to meet regularly.

97. At the first meeting, one board member suggested that two cities comprising Disney's property, Bay Lake and Lake Buena Vista, should be dissolved, despite the fact that the CFTOD board has no authority or mandate to dissolve the cities. Another hinted at plans to make major changes but did not go into detail. The board also approved hiring the same legal counsel that had advised Governor DeSantis's office on House Bill 9B.

98. Following that meeting, Disney released the following statement, holding onto hope that, despite the board's origins and Governor DeSantis's directives, the board might be willing to forgo its mandate to punish Disney and focus instead on the economic welfare of the District: "'The Reedy Creek Improvement District created and maintained the highest standards for the infrastructure for the Walt Disney World Resort. We are hopeful the new Central Florida Tourism Oversight District will continue this excellent work and the new

64 *Id.*

board will share our commitment to helping the local economy continue to flourish and support the ongoing growth of the resort and Florida's tourism industry.'"[65]

99. Unfortunately, CFTOD has repeatedly embraced the Governor's express mission to punish Disney for expressing disfavored viewpoints.

100. The Governor continued that mission on April 3, when he lashed out at Disney by announcing the launch of a wide-ranging civil and criminal investigation. Governor DeSantis directed his Chief Inspector General Melinda Miguel to probe "[a]ny financial gain or benefit derived by Walt Disney World as a result of RCID's actions and RCID's justifications for such actions," "[a]ll RCID board, employee, or agent communications related to RCID's actions, including those with Walt Disney World employees and agents," and several other topics. Governor DeSantis instructed Chief Inspector General Miguel to refer "[a]ny legal or ethical violations … to the appropriate authorities."[66]

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[65] Gabrielle Russon, *Report: New Disney Governing Board Looks at Hiring Special Counsel with Ties to Reedy Creek Law*, FLORIDA POLITICS (Mar. 8, 2023), https://floridapolitics.com/archives/593877-report-new-disney-governing-board-looks-at-hiring-special-counsel-with-ties-to-reedy-creek-law (last accessed August 28, 2023).

[66] Letter from Governor Ron DeSantis to Chief Inspector General Melinda Miguel (Apr. 3, 2023); *see Florida Governor Ron DeSantis Orders Investigation of Disney Over Reedy Creek Agreement*, DAPS MAGIC (Apr. 3, 2023), https://dapsmagic.com/2023/04/florida-governor-ron-desantis-orders-investigation-of-disney-over-reedy-creek-agreement/ (published copy of letter) (last accessed August 28, 2023).

101. Three days later, on April 6, Governor DeSantis stated at a public event that "ultimately we're going to win on every single issue involving Disney I can tell you that. … That story's not over yet. Buckle up. There's going to be more coming down the pike."[67]

102. Governor DeSantis conveyed his total control over the CFTOD board. Speaking on an Orlando radio program on April 17, Governor DeSantis warned that the CFTOD board would be meeting a few days later to "make sure Disney is held accountable."[68]

103. On April 17, Governor DeSantis convened a press conference and made clear that Disney would remain subject to his weaponization of State government to punish the company. Describing what his administration would do with land taken from Disney's control, he mused, "People are like: 'What should we do with this land?' People have said, maybe create a state park, maybe try to do more amusement parks, someone even said, like, maybe you need another state

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67 Gary Fineout, *'Buckle Up': DeSantis Escalates Disney Dispute, Eyes Hotel Taxes and Road Tolls*, POLITICO (Apr. 6, 2023), https://www.politico.com/news/2023/04/06/desantis-disney-hotel-taxes-toll-rodes-00090959.

68 Steve Contorno, *DeSantis Threatens Retaliation over Disney's Attempt to Thwart State Takeover*, CNN (Apr. 17, 2023), https://www.cnn.com/2023/04/17/politics/desantis-disney-takeover-florida/index.html.

prison. Who knows? I just think that the possibilities are endless[.]"[69] Governor DeSantis warned, "I look forward to the additional actions that the state control board will implement in the upcoming days."[70]

104. Representative Carolina Amesty took the podium after Governor DeSantis concluded his remarks. She reiterated the connection between the threatened board actions and Disney's protected speech: "Let it be known, across this great nation that here, in the free state of Florida, it is 'We the People,' not 'woke' corporations."[71] Representative Amesty continued, "We all love Disney; however, you cannot indoctrinate our children. Instead, they have turned Disney into this corporate PR arm of a small group of extremists who want to indoctrinate our children with radical gender ideologies that have no basis in science, common

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[69] Ron DeSantis (@GovRonDeSantis), Twitter (Apr. 17, 2023, 12:57 PM), https://twitter.com/GovRonDeSantis/status/1648007909333417985 ("Governor DeSantis Provides an Update on Florida's Response to Disney," remarks at 9:14) (last accessed August 28, 2023); Emma Colton, *DeSantis Fires Back at Disney as Company Tries to 'Usurp' State Oversight*, FOX NEWS (Apr. 17, 2023), https://www.foxnews.com/politics/desantis-fires-back-disney-company-tries-usurp-state-oversight.

[70] Press Release, Governor Ron DeSantis, *Governor Ron DeSantis Announces Legislative Action to Rebuke Disney's Last-Ditch Attempt to Defy the Legislature and the State of Florida* (Apr. 17, 2023), https://www.flgov.com/2023/04/17/governor-ron-desantis-announces-legislative-action-to-rebuke-disneys-last-ditch-attempt-to-defy-the-legislature-and-the-state-of-florida.

[71] Ron DeSantis (@GovRonDeSantis), TWITTER (Apr. 17, 2023, 12:57 PM), https://twitter.com/GovRonDeSantis/status/1648007909333417985 (remarks of Representative Carolina Amesty, at 21:42-21:51) (last accessed August 28, 2023).

sense, or basic human decency."[72] In conclusion, Representative Amesty warned, "As our great Governor has said, Florida is a place where woke goes to die."[73]

105. At the same April 17 press conference, *see supra* ¶¶ 103-104, Governor DeSantis announced ongoing efforts to give the State new authority to override safety inspections at Walt Disney World, as well as to regulate Disney's monorail transportation systems. Previewing the monorail legislation, Governor DeSantis falsely accused Disney of "exempt[ing] the monorail from any safety standards or inspections."[74]

106. At the conclusion of the press conference, Governor DeSantis stated, "Stay tuned. We've got more coming up."[75]

107. Like clockwork, one week later, Senator Nick DiCeglie introduced the monorail legislation as an amendment to a Senate transportation bill. *See* Senate Bill 1250 (2023), later substituted as House Bill 1305 (2023). In what has now become a familiar practice, the proposed amendment was precision-engineered to target Disney alone, just as Governor DeSantis intended and previewed—imposing

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72 *Id.* at 22:03-22:23.

73 *Id.* at 23:43-23:49.

74 Ron DeSantis (@GovRonDeSantis), TWITTER (Apr. 17, 2023, 12:57 PM), https://twitter.com/GovRonDeSantis/status/1648007909333417985 ("Governor DeSantis Provides an Update on Florida's Response to Disney," remarks at 8:12) (last accessed August 28, 2023).

75 *Id.* (remarks of Governor DeSantis) at 33:27-33:32.

state oversight over only those private monorail systems located "within an independent special district created by local act which have boundaries within two contiguous counties." *Id.*

108. Disney is the only company affected by House Bill 1305.

109. Underscoring the point, Senator Geraldine Thompson warned that House Bill 1305 "reeks of retribution."[76]

110. On May 2, the Senate passed House Bill 1305. The House passed the bill as amended the next day.

111. On May 5, 2023—at a press conference commemorating the end of the Florida legislative session—Governor DeSantis was asked about his "handling of Reedy Creek."[77] Without hesitation or prompt, Governor DeSantis admitted: "[T]his all started, of course, with our parents' rights bill."[78]

112. In a separate interview that same day, Governor DeSantis trumpeted the unequivocal intent and perceived success of his retribution campaign: "Since

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[76] Gabrielle Russon, *Senate Supports State Inspections of Disney World's Monorail, with 2 Republican Defections*, FLORIDA POLITICS (May 2, 2023), https://floridapolitics.com/archives/608999-senate-supports-state-inspections-of-disney-worlds-monorail-with-2-republican-defections.

[77] Ron DeSantis (@GovRonDeSantis), TWITTER (May 5, 2023, 11:22 AM), https://twitter.com/GovRonDeSantis/status/1654506916473888768 ("Florida's 2023 Legislative Session Ends," remarks at 34:45-38:58) (last accessed August 28, 2023).

[78] *Id.*

our skirmish last year, Disney has not been involved in any of those issues. They have not made a peep. That, ultimately, is the most important, that Disney is not allowed to pervert the system to the detriment of Floridians."[79]

113. Having exhausted all other options, Disney is left with no choice but to bring this Complaint asking the Court to stop the State of Florida from weaponizing the power of government to punish private business.

CAUSE OF ACTION:
FIRST AMENDMENT VIOLATION
(U.S. Const. amend. I, amend. XIV; 42 U.S.C. § 1983;
Declaratory Judgment Act, 28 U.S.C. §§ 2201-2202)

114. Disney realleges and incorporates by reference paragraphs 1-113.

115. Disney brings this cause of action against all Defendants.

116. Disney's public statements on House Bill 1557 are fully protected by the First Amendment, which applies with particular force to political speech. *See Citizens United v. Federal Election Commission*, 558 U.S. 310, 342 (2010). Speech such as Disney's, on public issues and petitions to the government, "occupies the core of the protection afforded by the First Amendment." *McIntyre v. Ohio Elections Comm'n*, 514 U.S. 334, 346 (1995); *see also Warren v. DeSantis*, 631 F. Supp. 3d 1188, 1195 (N.D. Fla. 2022) (First Amendment protects speech

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[79] NEWSMAX, *DeSantis talks Trump, Tucker, Disney and Biden in NEWSMAX exclusive*, YOUTUBE (May 5, 2023), https://www.youtube.com/watch?v=2UXmOkfeSAc (Governor DeSantis interview with John Bachman, at 0:05-3:52) (last accessed August 28, 2023).

"intended to influence public opinion and, in turn, any proposed legislation").

117. The retaliatory reconstitution of Disney's governing body's structure through the enactments of Senate Bill 4C and House Bill 9B have chilled and continue to chill Disney's protected speech. *See Bennett v. Hendrix*, 423 F.3d 1247, 1254 (11th Cir. 2005). This unconstitutional chilling effect is particularly offensive due to the clear retaliatory and punitive intent that motivated the Governor's and the Legislature's actions. *See Bailey v. Wheeler*, 843 F.3d 473, 486 (11th Cir. 2016).

118. Disney has a significant interest in its governing body's composition and structure, which has been directly targeted by the enactment of legislation providing for its complete revision. Disney faces concrete, imminent, and ongoing injury as a result of CFTOD's new powers and composition.

119. Senate Bill 4C and House Bill 9B were motivated by retaliatory intent. Governor DeSantis would not have promoted or signed, and the Legislature would not have enacted either bill, but for their desire to punish Disney for its speech on an important public issue. *See Warren*, 2022 WL 6250952, at *2 (crediting "sources of information about the Governor's motivation" for suspending a prosecutor, including a tweet from the Governor's press secretary and comments during the Governor's announcement of the suspension).

120. Governor DeSantis called on the Legislature to extend its special

session for the express purpose of enacting Senate Bill 4C the very day after Disney made a statement about House Bill 1557. He repeatedly and publicly stated that he was "fight[ing] back" for Disney's criticism of House Bill 1557, including at the bill-signing ceremony. Key legislators publicly acknowledged that Senate Bill 4C targeted Disney.

121. The law's passage was highly irregular. The bill was added to a special session convened for other purposes even though there was no emergency that would justify such rushed treatment: RCID had existed for decades, and Senate Bill 4C did not propose dissolution until June 2023. The bill passed only three days after identical bills were simultaneously introduced in the House and Senate. There was no debate in the House. Stakeholders did not have time to conduct their own analyses. And no concrete plan to effectuate the dissolution of RCID, or address the ramifications of doing so, was proposed in the months following the legislation's hasty enactment. *See Vill. of Arlington Heights v. Metro. Hous. Dev. Corp.*, 429 U.S. 252, 267 (1977) ("Departures from the normal procedural sequence also might afford evidence that improper purposes are playing a role. Substantive departures too may be relevant, particularly if the factors usually considered important by the decisionmaker strongly favor a decision contrary to the one reached.").

122. The circumstances surrounding the passage of House Bill 9B reveal

the same retaliatory targeting. Again, a special session was convened and the Legislature passed the bill within days of its introduction. During the Senate's floor session, Senator Doug Broxson confirmed that the bill was punishment for Disney failing to be "apolitical." Senator Broxson said, "We joined with the Governor in saying it was Disney's decision to go from an apolitical, safe 25,000 acres, and try to be involved in public policy. ... We're saying 'you have changed the terms of our agreement, therefore we will put some authority around what you do.'" Governor DeSantis gave the following context for House Bill 9B: "When corporations try to use their economic power to advance a woke agenda, they become political, and not merely economic, actors … Leaders must stand up and fight back when big corporations make the mistake, as Disney did, of using their economic might to advance apolitical agenda."

123. There are no rational bases for either Senate Bill 4C or House Bill 9B, and the purported justifications for both are pretextual.

124. Because both pieces of legislation retaliate against Disney for its protected speech, Disney is entitled to a declaratory judgment that the laws are unconstitutional and an order enjoining Defendants from enforcing them.

PRAYER FOR RELIEF

Plaintiff respectfully requests that this Court grant the following relief:

A. Declare that Senate Bill 4C and House Bill 9B are unlawful and

unenforceable because they were enacted in retaliation for Disney's political speech in violation of the First Amendment;

B. Issue an order enjoining Defendants from enforcing Senate Bill 4C and House Bill 9B;

C. Award Plaintiff its attorney's fees and costs; and

D. Grant such other relief as this Court may deem just and proper.

Dated: September 7, 2023

Respectfully submitted.

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CERTIFICATE OF SERVICE

I hereby certify that, on September 7, 2023, I electronically filed the foregoing with the Clerk of Court using the CM/ECF system which will send a notice of electronic filing to all counsel of record and the parties on the service list.

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